



FORECLOSURE SALE 51 UNIT APARTMENT COMPLEX IN LIBERTY, NEW YORK

AMENDED:

***August 21, 2006 at HAP, deleted paragraph on page 15,
Annual Financial Statements.***

August 17, 2006

See Property at a Glance

No Commercial Income

BARKLEY GARDENS APARTMENTS

Is offered for sale at foreclosure.



Bids will be accepted orally at: 1:00PM
local time on October 12, 2006

at: Sullivan County Courthouse
414 Broadway
Monticello, NY 12701



U. S. Department of Housing and
Urban Development

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| <input checked="" type="checkbox"/> ATTACHMENT C - Foreclosure Use Agreement | <input checked="" type="checkbox"/> ATTACHMENT F - Certification of Substantial Compliance |
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PROCEDURES AND FORMS REQUIRED TO COMPLETE BID AND PURCHASE

New Procedure Requirements – Previous Participation Certification

HUD's Active Partners Performance System (APPS) allows for the electronic submission of **Previous Participation Certification Form HUD-2530** on HUD's Secure Systems Internet site. Registration to use HUD's APPS and Secure Systems is a two-step process. All potential bidders registering for the first time in APPS should do so at least two weeks prior to the sale. Be advised that after registration in these systems, it takes approximately two weeks to receive the User/Coordinator ID. It is suggested that potential bidders register in these systems prior to the sale date. Please note that registration is not mandatory in order to bid at the foreclosure sales. However, bidders must comply with registration and 2530 requirements as outlined in ATTACHMENT B, TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER, Rider 1. For more information see Section 1 – Introduction and General Information, Section 2 – Previous Participation Certification and Section 4 – Submission of Post Bid Documents.

**THESE FORMS ARE AVAILABLE AT http://www.hudclips.org/sub_nonhud/html/forms.htm
OR CLICK ON THE URL BELOW TO OBTAIN THE FORM**

<input checked="" type="checkbox"/>	Personal Financial and Credit Statement (Form HUD-92417) for each proposed principal and/or partner http://www.hudclips.org/sub_nonhud/html/pdfforms/92417.pdf
<input checked="" type="checkbox"/>	Affirmative Fair Housing Marketing Plan (Form HUD-935.2) http://www.hudclips.org/sub_nonhud/html/pdfforms/935-2.pdf
<input checked="" type="checkbox"/>	Management Entity Profile (Form HUD-9832) http://www.hudclips.org/sub_nonhud/html/pdfforms/9832.pdf
<input checked="" type="checkbox"/>	Management Certification for Multifamily Housing Projects (Form HUD-9839 A) http://www.hudclips.org/sub_nonhud/html/pdfforms/9839-a.pdf
<input checked="" type="checkbox"/>	Management Certification for Multifamily Housing Projects (Form HUD-9839 B) http://www.hudclips.org/sub_nonhud/html/pdfforms/9839-b.pdf
<input checked="" type="checkbox"/>	Project Owner's/Borrower's Certification (Form HUD-9839 C) - For elderly housing projects managed by Administrators only http://www.hudclips.org/sub_nonhud/html/pdfforms/9839-c.pdf

SECTION 1 - INTRODUCTION AND GENERAL INFORMATION

1. **DEFINITION OF INVITATION FOR BID** - This document, including attachments, exhibits, and any amendment thereto, constitute the Invitation for Bid (Invitation) for **Barkley Gardens Apartments**, FHA Number; **012-35472**. PROPERTY AT A GLANCE, Attachment A to this Invitation, contains a summary of facts, figures, and most terms of the sale. This Invitation also includes **information concerning Previous Participation Certification (Form HUD-2530) requirements** and a list of the forms necessary to complete a responsive bid.
2. **BID RESPONSIVENESS** - A bid must be responsive to the terms of the sale. To be considered for award, a bid must comply in all material respects with this Invitation. Each bid on its face shall be firm, unconditional, responsive, fixed in one amount certain, and not in the alternative. Special conditions, alterations, or deletions will render a bid non-responsive. The terms of the foreclosure sale are those set out in the Invitation for Bid, especially the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder (Acknowledgment) and Foreclosure Sale Use Agreement. Lack of earnest money deposit, as required by this Invitation, will be cause for bid rejection.
3. **SALE TO HIGHEST QUALIFIED BIDDER** - Sale of this project will be made to the highest responsive, qualified Bidder.
4. **NO REDEMPTION PERIOD** - This sale is not subject to redemption by the previous owner.
5. **BID ACCEPTANCE OR REJECTION** - HUD reserves the right to reject any and all bids, to waive any informality in any bid received, and to reject the bid of any Bidder HUD determines lacks the experience, ability or financial responsibility needed to own and manage the project.
6. **CANCELLATION OF SALE** - HUD reserves the right to cancel this Invitation for Bid and/or reject any and all bids.
7. **BIDDER'S DUE DILIGENCE** - Bidders are encouraged to perform their own due diligence to gain a full understanding of the project and the conditions of sale before submitting a bid.
8. **POST-CLOSING REQUIRED REPAIRS** - Repair requirements that must be completed after closing, if applicable to this sale, are included in the Form HUD-9552, Post-Closing Repair Requirements, and Exhibits, Attachment E, to this Invitation. The repair requirements listed in Attachment E survive the sale and will be recorded with the Deed. **NOTE:** the Form HUD-9552 and exhibits reflect **cost estimates** of the required repairs.
While care has been exercised to assure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as might interest them in its purchase, and HUD makes no warranty as to the accuracy of such information. The failure of any Bidder to inspect, or be fully informed as to the condition of all or any portion of the property being offered, or condition of sale, will not constitute grounds for any claim, demand, adjustment, or withdrawal of a bid.
9. **RECORDATION OF CERTAIN DOCUMENTS** - Attachment E, Post Closing Repair Requirements (Form HUD-9552) and attachments, if provided herein, and Attachment C, Foreclosure Use Agreement with riders, will be recorded with the Deed.
10. **SOURCE FOR ADDITIONAL INFORMATION** - Should you need further information, please call the contact person indicated in the Property at a Glance.

SECTION 2 –PRE-FORECLOSURE SALE REQUIREMENTS AND PROCEDURES

PREVIOUS PARTICIPATION FOR PARTICIPANTS IN THE MULTIFAMILY PROGRAMS- New Procedure Requirements - Participants in Multifamily foreclosure sales, either as purchasers or management agents are required to register in HUD's Active Partners Performance System (APPS) which allows for the electronic submission of Previous Participation Certification Form HUD-2530 on HUD's Secure Systems Internet site.

Registration is not mandatory in order to bid at the foreclosure sale. However, it is suggested that all potential bidders registering for the first time in APPS do so at least two weeks prior to the sale. For instructions on registering in the APPS and HUD's Secure System click on the following link:

<http://www.hud.gov/offices/hsg/mfh/pd/genbkits.cfm>

Be advised, that if a Management Agent will be participating in the management of the property, or if you are changing principals, adding principals, changing the name, or changing tax identification, it is the high Bidder's responsibility to ensure that all participants register and complete the 2530 process within the prescribed timeframes.

Failure to FOLLOW THE PROCEDURE FOR 2530 SUBMISSION or submit other required documents within the indicated time frame may be grounds for rejection of the bid.

SECTION 3 - FORECLOSURE SALE PROCEDURES AND SUBMISSION OF BIDS

1. **GENERAL** - In order to submit a responsive bid to this Invitation, a Bidder must submit the items indicated in this Section. All the required forms are listed.
2. **BIDDING AT THE FORECLOSURE SALE** -
 - (a) The foreclosure sale is an oral, open bid sale that takes place at the date, time and place indicated in the attached Property at a Glance.
 - (b) The Bidder must either:
 - (i) State a bid price orally at the sale, **or**

- (ii) Submit a written bid to the person that conducts the sale two (2) business days before the date of sale. Written bids, if received, will be read aloud at the sale before oral bids are accepted. Only the person that submitted the written bid, or an agent thereof may raise a written bid price. Please call the contact person indicated in the Property at a Glance for details regarding submitting a written bid.

3. ITEMS THAT MUST BE SUBMITTED AT THE FORECLOSURE SALE

- (a) Acknowledgment - Immediately after the foreclosure sale has been completed, the high Bidder must submit **ONE** signed copy of the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder to the person that conducts the foreclosure sale.
- (b) Earnest Money Deposit
 - (i) The earnest money deposit, for not less than the amount specified in the Property at a Glance, must be submitted prior to presenting an oral or written bid.
 - (ii) The deposit must be in the form of a money order, certified, cashier's or other banker's check payable to: **THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**
 - (iii) No other method of payment for the earnest money deposit is acceptable
- 3. A financial organization submitting a bid on its own behalf must have the earnest money deposit drawn on a separate financial organization.
 - (v) Lack of proper deposit will be cause for rejection of the bid by HUD.
 - (vi) Immediately following the sale, earnest money will be returned to those whose bids have been rejected.
- 4. **CORRECTIONS** – Any changes or erasures made to a written bid may be made by the Bidder only and must be initialed.
- 5. **TELEGRAPHIC OR FACSIMILE BIDS** – Telegraphic or facsimile bids and/or bid modifications will not be considered for award.
- 6. **VERBAL NOTIFICATION TO THE HIGH AND SECOND HIGH BIDDER** – The high and second high Bidder will be notified verbally of their bidding positions by the person that conducts the foreclosure sale immediately after the foreclosure sale is completed.
- 7. **REJECTION OF LOWER BIDS** – All bids other than the high bid will be rejected verbally at the foreclosure sale by the person that conducts the foreclosure sale.

SECTION 4 – POST FORECLOSURE SALE PROCEDURES

- 1. **CONTINUATION OF OFFERS** - The high bid shall be deemed to be a continuing offer from the time of the foreclosure sale until closing or bid rejection by HUD. The second high bid shall be deemed to be a continuing offer until execution of the Foreclosure Sale Use Agreement or until thirty (30) days after the foreclosure sale, whichever occurs first, unless HUD and the second high Bidder mutually agree to extend the offer. After the above activities have occurred, or the extension agreement has ended, the bid will be deemed to have expired.
- 2. **SUBMISSION OF POST-BID DOCUMENTS**
 - **TWO (2) DAYS AFTER FORECLOSURE SALE –**
 - a. **Bidders not registered in APPS and Secure Systems:** The high Bidder must register in the **Active Partners Performance System (APPS)** which allows for the electronic submission of Previous Participation Certification (form HUD-2530) **and** the HUD's Multifamily Secure Systems **not later than two (2)** Federal Government working days after being verbally notified at the foreclosure sale of being the high Bidder. Please refer to SECTION 2, PREVIOUS PARTICIPATION above for instructions.
 - b. **Bidders previously registered in APPS and Secure Systems:** The high Bidder must enter the APPS system and print a copy of the Participant Detail page. That copy must be faxed to the Realty Specialist at (404) 730-2440.
 - **TEN (10) DAYS AFTER FORECLOSURE SALE** - Not later than ten (10) Federal Government working days after being verbally notified at the foreclosure sale of being the high Bidder, the Bidder must, if checked below, submit additional information to the contact person listed in the Property at a Glance.

<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Affirmative Fair Housing Marketing Plan (Form HUD 935.2) <input checked="" type="checkbox"/> Form HUD- 2530 for Purchasing Entity, if different from bidding entity, See Section 2 for procedure <input checked="" type="checkbox"/> Form HUD- 2530 for the Managing Agent, if Applicable, See Section 2 for procedure <input checked="" type="checkbox"/> Personal Financial and Credit Statement (Form HUD 92417) - For each proposed principal and/or general partner <input checked="" type="checkbox"/> Management Entity Profile (Form HUD 9832) <input checked="" type="checkbox"/> Management Certification (Form HUD 9839 A & B) <input checked="" type="checkbox"/> Project Owner's/Borrower's Certification (Form HUD 9839 C) - For elderly housing projects managed by Administrators only 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Bidders Property Management Statement The Bidder must complete and submit written statements of how the purchaser will: <ul style="list-style-type: none"> (i) Satisfy the condition of the disposition; (ii) Implement a sound financial and physical management program; (iii) Respond to the needs of the tenants and work cooperatively with resident organizations; and (iv) Provide adequate organizational staff and resources to the project. <input checked="" type="checkbox"/> Statement of the services, maintenance and utilities that the bidder proposed to provide.
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The high bidder must also provide Certification to HUD that any other projects that are owned by the high bidder or its affiliates and are located in the same jurisdiction as Barkley Gardens Apartments are in substantial compliance with applicable State and/or local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the high bidder. If HUD determines in its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the project to the high bidder (See Attachment F).

- **FIFTEEN (15) DAYS AFTER FORECLOSURE SALE** - The high Bidder (owning entity) must electronically file the 2530 within 15 days of the foreclosure sale and fax a printed copy of the 2530 Submission Package to the HUD Office at (404) 730-2440. Please refer to SECTION 2, PREVIOUS PARTICIPATION above for instructions.

FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME MAY BE GROUNDS FOR REJECTION OF THE BID.

3. QUALIFICATION, ACCEPTANCE, REJECTION OF BID

- (a) HUD will review the high Bidder to determine if qualified to purchase the project.
 - (i) If HUD approves the high Bidder as being qualified, the high Bidder will be confirmed as and identified as the Purchaser.
 - (ii) If the high bid is rejected due to HUD's determination that the high Bidder is not qualified to purchase the project, HUD will notify the high Bidder in writing.
- (b) If HUD rejects the high Bidder, the second high Bidder will be given twenty-four (24) hours to submit the earnest money deposit and will be reviewed to determine if qualified to purchase the project.
 - (i) If HUD approves the second high Bidder as being qualified, second high Bidder will be confirmed as and identified as the Purchaser.
 - (ii) If the second high bid is rejected due to HUD's determination that the second high Bidder is not qualified to purchase the project, HUD will notify the second high Bidder in writing.
- (c) HUD's notification of rejection due to lack of qualifications, if applicable, shall be deemed to be given when mailed to the individual indicated in the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder.
- (d) The written rejection of the bid will be made as promptly as possible and generally within thirty (30) days after the date of the foreclosure sale.

4. HANDLING OF THE EARNEST MONEY DEPOSIT

- (a) The earnest money deposit of the high Bidder will be held until HUD determines the high bid/Bidder to be acceptable. If HUD does not accept the high bid, the high Bidder's earnest money will be refunded.
- (b) Interest will not be paid on earnest money deposits.

5. **REVIEW OF PROJECT MANAGEMENT** - HUD may elect to discuss project management plans after submission of the post-bid documents by the high Bidder.

6. **CLOSING DATE REQUIREMENT** - The closing date will take place within the time period specified, in accordance with the Acknowledgment, Attachment B.

7. **EXTENSION OF CLOSING** - The right to extend the sales closing is expressly reserved by HUD as set forth in the Acknowledgment, Attachment B.

SECTION 5 - CLOSING

- 1. **EXECUTION OF USE AGREEMENT** - The Bidder must execute Attachment C, "Foreclosure Sale Use Agreement," at closing. HUD will then execute the Agreement.
- 2. **CLOSING DATE AND PLACE** - The closing date and place shall be as determined by the person that conducts the foreclosure sale and/or HUD. The Bidder will be notified of said date and place by the person conducting the foreclosure sale.
- 3. **CASH DUE AT CLOSING** - Cash due at closing is the remainder of the purchase price less the earnest money deposit received, plus or minus any prorations. Cash due at closing includes all initial deposits to reserve accounts, if applicable.
- 4. **PRORATIONS** - There will be no prorations except for the proration of property taxes prepaid by HUD, if any.
- 5. **CLOSING EXPENSES** - Irrespective of local custom, the Bidder shall pay all closing expenses, including, but not limited to, all documentary stamp taxes, all recording fees, and any costs in connection with a review of title or title insurance as may be requested by the Bidder.
- 6. **METHOD OF PAYMENT** - Cash due at closing shall be paid in the form of a money order, certified, cashier's or other bank check made payable to: **THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**, in accordance with the Acknowledgment, Attachment B.

7. **LETTER OF CREDIT** - If Post-Closing Repair Requirements described in Attachment E are included in this sale, the Bidder, at closing, shall provide HUD with an unconditional, irrevocable, and nondocumentary Letter of Credit (LoC), or a group of no more than five (5) LoCs, in the amount stated in the Property at a Glance. Such LoCs shall expire no earlier than six (6) months after completion of the stated required repairs. HUD will release the undrawn balance in the LoCs six (6) months after completion of repairs. Such undrawn balance shall be of an amount equal to ten percent (10%) of the original total of the repair estimate.
8. **CONVEYANCE** - Conveyance of the project shall be by Special Warranty Deed from the person that conducts the foreclosure sale. The deed will not contain any warranty of title.
9. **RECORDATION OF DEED** - Either HUD or the Bidder (Purchaser) may record the Deed, at the discretion of the HUD Counsel. HUD shall record all other recordable documents. All recordation costs shall be at the expense of the Bidder (Purchaser).
10. **DOCUMENTS TO BE FURNISHED OR EXECUTED AT CLOSING**
☒ **Foreclosure Sale Use Agreement** ☒ **Letter(s) of Credit** ☒ **Closing Statement**
☒ **Other: HAP Contract**

SECTION 6 - DISCLAIMERS

1. **DISCLAIMER**
 - (a) Bidders interested in purchasing this project are expected to acquaint themselves with the property, and to arrive at their own conclusions as to; physical condition, number and occupancy of revenue producing units, estimates of operating costs, repair costs (where applicable), and any other factors bearing upon valuation of the property. Any bid submitted shall be deemed to have been made with full knowledge of all the terms, conditions and requirements contained in this Invitation for Bid and in any Addendum hereof.
 - (b) While care has been exercised to assure accuracy, all information provided is solely for the purpose of permitting parties to determine whether or not the property is of such type and general character as might interest them in its purchase, and HUD makes no warranty as to the accuracy of such information. The failure of any Bidder to inspect, or be fully informed as to the condition of all or any portion of the property being offered, or condition of sale, will not constitute ground for any claim or demand or adjustment or withdrawal of a bid.
2. **UNAUTHORIZED ORAL STATEMENT OR MODIFICATIONS** - Any oral statement or representation by any representative of HUD changing or supplementing this Invitation for Bid or Addendum hereof, or any condition hereof, is unauthorized and shall confer no right upon the Bidder (Purchaser).
3. **HUD LIABILITY** - In any case, with respect to any claim against HUD, the extreme measure of HUD's liability shall not, in any event, exceed refund of the purchase price, or such portion thereof as HUD may have received.



Property at a Glance

USE RESTRICTIONS

20 Years affordable housing. N/A Years rent cap protection for N/A residents.

CAUTION TO BIDDERS

Bidders are cautioned that payments under the HAP Contract may not start immediately after closing, either due to repairs required to be completed by the purchaser or processing time required to verify eligibility and inspect units. Prior to receipt of the subsidy payments, purchaser may not charge eligible tenants, who are slated to receive Section 8, more than the amount of Total Tenant Payment the tenant would be required to pay under Section 8 program. In addition, some tenants may have to be temporarily relocated due to project repairs. HUD has already accounted for these and other costs in this project's disposition process. Therefore, HUD is not obligated to make any monetary adjustments to cover any costs that may be incurred by the purchaser. Bidders should compute their bids accordingly.

TERMS OF SALE

The purchaser must complete the repairs to HUD's satisfaction within **18 months** after closing. The repairs are estimated to cost **\$127,021**. Closing is to be held **30 days** after HUD accepts the bid. If HUD authorizes an extension of the closing, the purchaser must pay a fee which is the greater of 1.5% of the purchase price or HUD's holding costs of **\$19.46** per unit per day for each 30 day period. Participants in Multifamily foreclosure sales, either as purchasers or management agents are required to register in HUD's Active Partners Performance System (APPS) which allows for the electronic submission of Previous Participation Certification Form HUD-2530 on HUD's Secure Systems Internet site. **Registration is not mandatory in order to bid at the foreclosure sale. However, it is suggested that all potential bidders registering for the first time in APPS do so at least two weeks prior to the sale.** For instructions on registering in the APPS and HUD's Secure System click on the following link: <http://www.hud.gov/offices/hsg/mfh/pd/genbkits.cfm>

Be advised, that if a Management Agent will be participating in the management of the property, or if you are changing principals, adding principals, changing the name, or changing tax identification, it is the high Bidder's responsibility to ensure that all participants register and complete the 2530 process within the prescribed timeframes.

Two Days following Foreclosure Sale: The high Bidder must submit **within two (2)** Federal Government working days of the foreclosure sale, certification to HUD that the Bidder has registered in APPS and Secure Systems. This certification can be in the form of a copy of the Participant Successfully Registered page from the APPS system **and** a copy of the Multifamily Coordinator and User Registration page from Secure Systems **or** a copy of the Participant Detail page (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4 for printing instructions). The high Bidder is also responsible for submitting any changes necessary for principals, tax ID, and ownership in the APPS system.

Fifteen Days following Foreclosure Sale: The high Bidder must submit within fifteen (15) Federal Government working days of the foreclosure sale, certification to HUD that the Bidder (owning entity) has completed the 2530 submission process in APPS. This certification must be in the form of a printed copy of the 2530 Submission Package (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4).

The high bidder must also provide Certification to HUD that any other projects that are owned by the high bidder or its affiliates and are located in the same jurisdiction as Barkley Gardens Apartments are in substantial compliance with applicable State and/or local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the high bidder. If HUD determines in its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the project to the high bidder. (See Attachment F)

For questions about APPS contact the Multifamily Housing Systems Help Desk at 1-800-767-7588.

PROSPECTIVE BIDDERS SHOULD READ AND THOROUGHLY UNDERSTAND ALL INFORMATION PROVIDED HEREIN AND IN THE BID KIT PRIOR TO SUBMITTING A BID.

This is an "All Cash – As Is" sale. HUD is providing no financing for this sale. The purchaser must provide for payment of the full purchase price in cash at closing.

Submission of Bids: Bids for this property can only be considered for acceptance if submitted on the specific forms listed in the Bid Kit for this property, along with required earnest money. A Bid Kit may be obtained as indicated below.

Suspended or Debarred Parties: No consideration will be given to a bid submitted by any party currently suspended or debarred from participating in HUD programs. AS PROVIDED FOR IN 24 CFR, SEC. 27, THE DEFAULTING MORTGAGOR, OR ANY PRINCIPAL, SUCCESSOR, AFFILIATE, OR ASSIGNEE ON THE MORTGAGE AT THE TIME OF DEFAULT SHALL NOT BE ELIGIBLE TO BID ON OR OTHERWISE PURCHASE THIS PROPERTY. (Principal and Affiliate are defined at 24 CFR 24.105.)

INSPECTION OF PROPERTY AND BIDDING INSTRUCTIONS

Prospective bidders are urged and invited to inspect the property prior to submitting a bid. Note: If this is a foreclosure sale, HUD may not have access to the property. Bids for this property can only be considered if properly submitted by following the bidding instructions provided in the FREE INFORMATION and BID KIT.

The FREE INFORMATION and BID KIT may be viewed or printed at <http://www.hud.gov/offices/hsg/mfh/pd/multifam.cfm> You may also sign up for our electronic mailing list at this web address. If you do not have access to the internet or can not download a PDF file, you may obtain a bid kit by calling (719) 550-9291, or faxing (719) 550-1622, or by email to: "usa0567@kinkos.com" <mailto:usa0567@kinkos.com>

BIDS for Barkley Gardens Apt.
MUST BE PRESENTED ON: October 12, 2006
at: 1:00 pm local time
at: Sullivan County Courthouse
414 Broadway
Monticello, NY 12701

HUD OFFICE:
Atlanta MFPD Center
Five Points Plaza
40 Marietta St.
Atlanta, GA 30303

REALTY SPECIALIST:
donald_j._winston@hud.gov
Phone: (404) 331-5001 X2095
mailto:donald_j._winston@hud.gov

ATTACHMENT B

TERMS AND REQUIREMENTS OF FORECLOSURE SALE - ACKNOWLEDGMENT BY BIDDER

PART I

BID PRICE - The Undersigned, _____, (the "Bidder") submits a bid of _____ dollars (\$) at the foreclosure sale of Barkley Gardens Apartments (the "Project", the legal description of which is included as Exhibit A of Attachment C, Foreclosure Sale Use Agreement) to be paid as follows:

1. \$100,000 in the form of a money order, cashier's or other bank check, as earnest money, which has been paid at the foreclosure sale to the person that conducts the foreclosure sale, and which shall not earn interest (the "Deposit"), **and**
2. \$ _____ the balance, to be paid by the Bidder at Closing, in the form of a cashier's or other bank check in accordance with this Acknowledgment. The Closing will be held at a place, date and time established in accordance with Section 4 below (the "Closing").
3. In addition to the above, the Bidder will be required to pay at closing all closing costs, regardless of local custom, and, where applicable, other deposits to reserve and/or letters of credit as described in Riders incorporated herein, the Invitation for Bid (Invitation), and the Foreclosure Sale Use Agreement (Use Agreement).

PART II

If selected as the high Bidder at or after the foreclosure sale, the Bidder, by executing this document (the "Acknowledgment"), acknowledges that the Bidder must comply with the following requirements as a condition to purchasing the Project:

1. **ACKNOWLEDGMENT OF TERMS** - Bidder affirms to have full knowledge of the all terms, conditions and requirements contained in this Acknowledgment and documents referred to herein, the invitation and Attachments, and the Notice of Default and Foreclosure Sale. Bidder must execute this document.
2. **EXECUTION OF USE AGREEMENT** - At Closing, Bidder will, in addition to any other documents, execute the Foreclosure Sale Use Agreement and all of the Exhibits to the Use Agreement as contained in the Invitation to Bid. Such documents will control the use of the Project for a specified period and will be recorded with the Deed and run with the land.
3. **PREVIOUS PARTICIPATION CERTIFICATION** -
 - (a) **Two Days following Foreclosure Sale:** The high Bidder must submit **within two (2)** Federal Government working days of the foreclosure sale, certification to HUD that the Bidder has registered in APPS and Secure Systems. This certification can be in the form of a copy of the Participant Successfully Registered page from the APPS system **and** a copy of the Multifamily Coordinator and User Registration page from Secure Systems **or** a copy of the Participant Detail page (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4 for printing instructions). The high Bidder is also responsible for submitting any changes necessary for principals, tax ID, and ownership in the APPS system.
 - (b) **Fifteen Days following Foreclosure Sale:** The high Bidder must submit within fifteen (15) Federal Government working days of the foreclosure sale, certification to HUD that the Bidder (owning entity) has completed the 2530 submission process in APPS. This certification must be in the form of a printed copy of the 2530 Submission Package (see APPS User Guide-Industry, Chapter 15, pages 15-2 through 15-4).

The high bidder must also provide Certification to HUD that any other projects that are owned by the high bidder or its affiliates and are located in the same jurisdiction as Barkley Gardens Apartments are in substantial compliance with applicable State and/or local housing statutes, regulations, ordinances and codes. HUD may, in its discretion, verify the accuracy of such certification and request supporting documentation from the high bidder. If HUD determines in its sole discretion that such other projects are not in substantial compliance, HUD will have the right to refuse to sell the project to the high bidder (See Attachment F).

4. **ESTABLISHMENT OF CLOSING DATE, TIME AND PLACE**
 - (a) Time is of the essence.
 - (b) HUD will notify the Bidder and the person conducting the foreclosure sale (the "Foreclosure Official") after HUD determines that the Bidder has been approved to purchase this project under the Previous Participation Certification procedure. The Foreclosure Official will establish a time and date for the Closing. The Closing **shall be within thirty (30) days of such notification**, unless extended pursuant to Section 8.
 - (c) The Closing will take place at the HUD office stated in the Invitation or at such other place as may be agreed upon between HUD and the Foreclosure Official.
5. **CLOSING, CLOSING EXPENSES AND TRANSFER OF POSSESSION**
 - (a) The sale shall be effective upon Closing.
 - (b) Bidder (Purchaser) shall pay all closing costs and expenses irrespective of local custom.
 - (c) Transfer of title to and possession of the Property shall become effective as of the Closing.

6. PAYMENT OF PURCHASE PRICE AT CLOSING - The Bidder (Purchaser) shall pay the balance at Closing in the form of a cashier's or other bank check made out to:

THE SECRETARY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Closing will be held at a place, date and time established in accordance with Section 4 above.

7. LIQUIDATED DAMAGES - Should Bidder fail or refuse to perform all obligations under this Acknowledgement for any reason including, but not limited to, failure to establish the legal entity that is to take title in a timely manner that permits Closing within the deadline set forth in Section 4, the earnest money deposit and any extension fees, paid under Section 8, shall be remitted to and retained by HUD as liquidated damages.
8. EXTENSION FEES – Extensions of time to close the sale are within HUD's sole and absolute discretion. Any extensions, if granted, will be on the following conditions:
- (a) A written request for an extension must be received at the HUD office located at: Department of Housing and Urban Development, Five Points Plaza, 40 Marietta Street, Atlanta, GA 30303-2186 within **seven (7)** days prior to the prescribed closing date, or within any extension period and **must be accompanied by the payment** of the required extension fee. The request must state the reason for Bidder's inability to close the sale within the initial period or any extended period.
 - (b) Extensions shall be for thirty (30) days.
 - (c) For each thirty (30) day period requested by Bidder and approved by HUD, extension fees shall be equal to **\$19.46**, per unit, per day, (the holding cost for such period) or one and one-half percent (1.5%) of the purchase price, whichever is greater.
 - (d) These fees shall be retained by HUD and shall not be credited to the amount due from Bidder at Closing. However, if Bidder closes prior to the expiration of an extension period, the prorated amount of the extension fee, for the unused portion of the extension period, shall be credited toward the amount due from Bidder at Closing.
 - (e) The granting of one or more extensions shall not obligate HUD to grant additional extensions.
 - (f) If any form or instrument required by HUD is not submitted within sufficient and reasonable time for HUD's review or processing and such delay necessitates an extension of the Closing deadline, an extension fee must be paid for this period.
 - (g) Extension Fees must be submitted by money order, certified, cashier's or other bank check acceptable to HUD.
9. BIDDER RESTRICTIONS
- (a) No Member of/or Delegate to Congress, resident commissioner, or local elected official, shall be admitted to any share or part of this sale, or to any benefit arising from it. However, this provision does not apply to this sale to the extent that this sale is made with a corporation for the corporation's general benefit.
 - (b) If Bidder is, or becomes suspended, debarred, or temporarily denied from participating in HUD programs prior to closing, this sale shall be terminated. In addition, if such suspension, debarment or temporary denial of participation occurs either before or after Bidder's execution of this Acknowledgment, any extension fees paid under Section 8 shall be retained by HUD as liquidated damages.
 - (c) Pursuant to 24 CFR Part 27 Section 20(f), the defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105.
10. AS-IS SALE; NO REPRESENTATIONS
- (a) Bidder shall accept the Property "as is." HUD makes no representations or warranties concerning the physical condition of the Property. In addition, HUD does not represent or warrant the number and occupancy of revenue producing units, or any factor bearing upon the value of the Property.
 - (b) Bidder acknowledges that the purchase price set forth in this Acknowledgment is based on Bidder's evaluation of the project and not upon any representations by HUD. Bidder's failure to inspect, or to be fully informed as to any factor bearing upon the valuation of the Property, shall not affect the liabilities, obligations or duties of HUD, nor be a basis for termination of this sale or for the return of any extension fees paid pursuant to Section 8.
11. RISK OF LOSS AND RIGHTS OF RESCISSION - In the event of any substantial damage to the Project prior to closing by any cause including, but not limited to, fire, flood, earthquake, tornado and significant vandalism other than willful acts or neglect, HUD, in its sole discretion, may negotiate with the Bidder for a reduction in the sales price corresponding to the estimated amount of damages. Such damages shall be added to the Post-Closing repair requirements, HUD Form - 9552 included in the Invitation. If HUD and the Bidder are unable to agree on the amount by which the purchase price should be reduced or on the amendment to the repair requirements, Bidder may withdraw the bid, in which case HUD will direct the return of the earnest money deposit and any extension fee(s) will be returned.

12. PRORATIONS

- (a) Except as set forth in paragraph (b) below, there will be no prorations at Closing. The Bidder will be responsible only for those expenses incurred at the Project after Closing.
- (b) At Closing, the Bidder will pay the Foreclosure Official a prorata share of any property taxes on the Project which have been paid for a period of time ending after the date of Closing. The Bidder will be responsible for paying in full, all taxes, that come due after Closing. Taxes paid by the Bidder after Closing will not be prorated, even if those taxes are for a period which began prior to Closing.
- (c) No later than fifteen (15) days before Closing, HUD will notify the Bidder of the amount the Bidder is to pay the Foreclosure Official as the prorata share of taxes.

13. SECURITY DEPOSITS - APPLICATION AS CHECKED:

- ☒ Notwithstanding State or local law, the Bidder will receive only those security deposits which are on hand at the Project on the date of Closing. The Bidder will assume all liability under State and local law with respect to security deposits.
- ☐ Any security deposits collected from tenants and paid over to HUD prior to the Closing shall be transferred and assigned to Bidder within fifteen (15) days after the closing, with the exception of security deposits which have been forfeited by the tenant in accordance with the terms of the tenant's lease. Notwithstanding State and local law, no other security deposits collected from tenants will be transferred by HUD to Bidder and HUD has no other liability under State and local law with respect to security deposits. Bidder agrees to assume all responsibility and liability under State and local law with respect to the collection, application and return of security deposits.

14. LIMITATION OF LIABILITY - Notwithstanding any other provisions of this sale, HUD's liability shall not exceed the amount of funds paid by Bidder to HUD and/or the Foreclosure Official hereunder.

15. ANTI-COLLUSION CERTIFICATION

- (a) The Bidder certifies:
 - (i) The bid price in this offer has been arrived at independently, without (for the purposes of restricting competition) any consultation, communication, or agreement with any other Bidder relating to:
 - a. the bid price;
 - b. the intention to submit a bid price; **or**
 - c. the methods or factors used in calculating the bid price offered;
 - (ii) The bid price in this offer has not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before or during the actual time of the bid event, unless otherwise required by law; **and**
 - (iii) No attempt has been made or will be made by the Bidder to induce any other Bidder to submit or not to submit a bid price for the purpose of restricting competition.
- (b) If the bid procedure requires or permits written bids, each signature on the offer is considered to be certification by the signatory that the signatory:
 - (i) Is the person in the Bidder's organization responsible for determining the bid price being offered in this bid and that the signatory has not participated and will not participate in any action contrary to paragraph (a) above; **or**
 - (ii) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraph (a), above;

Name_____

Title_____

Organization responsible

for determining bid price_____

- a. As an authorized agent, does certify that the principals named in the above have not participated, and will not participate, in any action contrary to paragraph (a) above; and
- b. As agent, has not personally participated, and will not participate, in any action contrary to paragraph (a) above.

16. FAILURE TO COMPLY - Upon the failure or refusal of the Bidder to comply with any of the requirements listed above, HUD may declare the Bidder ineligible to purchase the Project, in which case Bidder shall forfeit the earnest money deposit and any extension fees paid.

17. SEVERABILITY - If for any reason one or more of the provisions contained in the Invitation, including this Acknowledgment, the Use Agreement, or any other attachments or exhibits thereto, shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of the Invitation, but the Invitation shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included therein.

18. FORMS - All forms and instruments referred to in this Acknowledgment are the standard Form HUD and instruments prepared by HUD and used by HUD in the jurisdiction in which the Property is located and shall contain such additional covenants and conditions required by the Invitation for Bid or Request for Proposals.

19. EXECUTION

- (a) By signature below, Bidder indicates acknowledgment of and agreement to the terms and requirements of this foreclosure sale.
- (b) In the case of a bid submitted by an agent or representative of the Bidder, the signatory attests to be duly authorized to submit the bid on behalf of the Bidder and to execute this Acknowledgment.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

Executed by the Bidder on the _____ day of _____, 20____.

Witness: _____

By: _____

Typed Name: _____

Typed Name: _____

Address:

City, State, Zip

Phone No. with Area Code:

FORECLOSURE SALE USE AGREEMENT

The Bidder acknowledges the receipt of a copy of the Foreclosure Sale Use Agreement applicable to this project's sale and the inclusion of the following Riders in that Agreement:

- ☐ Nondiscrimination against Multifamily Section 8 Certificate Holders and Voucher Holders
- ☐ Tenant-Based Section 8 Restriction
- ☒ Affordability of Units
- ☐ Two-Year Rent Protection for Pre-Existing Very Low-Income Tenants
- ☒ Post-Closing Repair Escrow Requirements
- ☐ Post-Closing Repair to Local Codes and/or Demolition Escrow Requirements
- ☒ Relocation
- ☐ Relocation [NURSING HOMES, BOARD AND CARE FACILITIES and/or ASSISTED LIVING FACILITIES (ALF)]
- ☒ Asbestos Hazards
- ☒ Lead-Based Paint Hazards
- ☐ Existing Hazardous Substances-Demolition Activities
- ☐ Historic Preservation
- ☐ Mobile Home Parks
- ☐ Retirement Service Centers
- ☒ Projects Primarily Occupied by the Elderly
- ☒ Project-Based Section 8 Assistance
- ☒ Reserve for Replacement

The Foreclosure Sale Use Agreement, with the above noted Riders, is to be incorporated into and recorded as part of the Deed.

Bidder acknowledges that this Rider is incorporated into and is a part of the Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder

Bidder _____

ATTACHMENT C
FORECLOSURE SALE USE AGREEMENT

This Agreement is entered into by _____ ("Purchaser") and the Secretary of Housing and Urban Development ("Secretary" or "HUD").

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. Sections 3701 et seq. (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, or pursuant to a judicial foreclosure the Secretary has elected to apply Section 367(b) of the Act, with respect to Barkley Gardens Apartments, HUD Project No. 012-35472, (the "Project" or the "Property") a legal description of which is attached as Exhibit "A"; **and**

WHEREAS, pursuant to the Act and to provisions of 12 U.S.C. Section 1701z-11 et seq., Management and Preservation of HUD-Owned Multifamily Housing Projects, and the Department of Housing and Urban Development regulations thereunder at 24 CFR Part 290, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the property subject to a mortgage held by the Secretary that is sold at foreclosure to a purchaser other than HUD; **and**

WHEREAS, by Deed executed this _____ day of _____, 20____, by _____, the Project has been conveyed to the Purchaser; **and**

NOW THEREFORE, in consideration of the mutual promises set forth herein and in further consideration of the sale of the Project to the Purchaser, the parties agree as follows:

1. **TERM OF AGREEMENT** - This Agreement shall be in effect,
☒ twenty years from the date of this Agreement **or** ☐ until
2. **CONVEYANCE OF PROJECT**
This paragraph ☒ **is** ☐ **is not** applicable for this property
During the term of this Agreement, any conveyance of the project must have prior written approval of HUD. HUD's approval of conveyance and/or the proposed purchaser's management of the property will be based on information provided in written statements of how the purchaser, or any subsequent purchaser, in consideration of any and all existing use restrictions, will:
 - (a) implement sound financial and physical management program;
 - (b) respond to the needs of the tenants and work cooperatively with resident organizations;
 - (c) provide adequate organizational staff and resources to manage the project.
3. **SUBJECT TO EXAMINATION** - The Project shall at all times,
 - (a) be maintained in decent, safe and sanitary condition to the greatest extent possible,
 - (b) maintain full occupancy to the greatest extent possible,
 - (c) be maintained as rental housing for the term of this Agreement.At the request of the Secretary, Purchaser must supply evidence by means of occupancy reports, physical condition reports, reports on operations, or any evidence as requested to ensure that the above requirements are being met.
4. **UNIT NUMBER OR USE CHANGE** - Changes to the use, number, size, or configuration of residential units in the Project; e.g., apartment units, beds in a care facility, from the use as of the date of this Agreement, must receive the written prior approval of HUD.
5. **NON-DISCRIMINATION REQUIREMENTS** - The Purchaser will comply with the provisions of all Federal, State, or local laws prohibiting discrimination in housing.
6. **HAZARD INSURANCE** - Hazard insurance shall be maintained in an amount to ensure that the Purchaser is able to meet the rental housing requirements described in this Agreement.
7. **DESTRUCTION OF PROJECT** - In the event that any or all of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Project shall be applied to rebuild or replace the property destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
8. **DEMOLITION OF PROJECT PROPERTY** - The Purchaser will not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs), without the prior written approval of HUD.
8. **REMEDIES FOR NONCOMPLIANCE** - Upon any violation of any provision of this Agreement by the Purchaser, HUD may give written notice thereof to the Purchaser by registered or certified mail, addressed to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary, may be designated by the Purchaser as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of this agreement, for the appointment of a receiver to

take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain.

The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not construe a waiver of the right to exercise that or any other right or remedy at any time.

10. **SUCCESSORS AND ASSIGNS** - This Agreement is binding upon the Purchaser's heirs, successors and assigns. The Purchaser agrees that if title to the Project is conveyed during the term of this Agreement, the Purchaser will require its purchaser to assume in writing its obligations under this Agreement.
11. **RESTRICTIONS** - No Member of Congress or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of the benefits of the Use Agreement, but this provision shall not be construed to extend to this Use Agreement if the Use Agreement is made with a corporation for its general benefit.
12. **CONTRADICTORY AGREEMENTS** - The Purchaser certifies that it has not, and agrees that it will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict with this Agreement.
13. **SEPARABILITY** - The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
14. **AMENDMENT** - This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.

IN WITNESS WHEREOF:

The Purchaser has executed this Use Agreement in triplicate this _____ day of _____, 20____.

WITNESS:

PURCHASER:

By: Signature

Typed Name of Purchaser

Street Address

City, State, Zip Code

The U.S. Department of Housing and Urban Development (HUD) has executed this Use Agreement in triplicate this _____ day of _____, 20____.

WITNESS:

FOR: THE SECRETARY OF HOUSING
AND URBAN DEVELOPMENT

BY: _____

Official's Typed Name

Title

Exhibit A to Attachment C

Legal Description

All That Tract or Parcel of Land situate in the village of Liberty, Town of Liberty, County of Sullivan and State of New York, being the lands of Milton Yust as described and recorded in the Sullivan County Clerk's Office in Liber of Deeds 390, at Page 319, bounded and described as follows:

BEGINNING at a point in the approximate centerline of the traveled way of North Main Street where it is intersected by the approximate centerline of traveled way of Buckley Street and running thence from said point of beginning along said centerline of North Main Street the following three courses and distances:

1) S. 13 degree 57 feet 00 inches W. 74.59 feet

2) S. 8 degree 05 feet 10 inches W. 74.93 feet

3) S. 6 degree 35 feet 10 inches W. 39-74 feet to the northeast corner of

land of St. Peter's Roman Catholic Church (see DL. 893, P. 246); thence running along the northerly bounds of same N. 80 degree 24 feet 55 inches W. 238.54 feet and N. 75 degree 34 feet 05 inches W. 13.00 feet to the southeast corner of lands of Ellison (see DL. 468, P. 268); thence running along the easterly bounds and northerly bounds of said Ellison lands N. 20 degree 17 feet 55 inches E. 99.75 feet and N. 74 degree 57 feet 05 inches W. 60.00 feet to the southeast corner of lands of Saravese (see DL. 466, P. 274); thence running along the easterly bounds of same N. 19 degree 32 feet 55 inches E. 141.96 feet to said centerline of Buckley Street; thence running along same S. 68 degree 45 feet 15 inches E. 275.44 feet to the point or place of beginning.

EXCEPTING so much thereof as has been heretofore conveyed or is now used for highway purposes.

TOGETHER with the right to lay and maintain forever a drain or water pipe across the lands of Edward Champlin on the east side of Main Street on a strip of land four feet wide along the line between Champlin and Elmer Winner's said drain to be always covered three feet deep and to discharge into the brook.

This grant is subject to the right heretofore conveyed to Benjamin W. Winner to convey water across the said lands by him or his assigns.

AFFORDABILITY OF UNITS

The Deed shall contain the following provisions:

Housing Assistance Payments (HAP) Applicable when checked:

☒ As long as the HAP contract is in effect, the HAP will control the rent and eligibility requirements for the residents under the HAP. If the HAP expires, terminates or is not renewed within the affordability term as specified below, the Affordability Rider will control future operations of the property. No resident in place at the time of enactment will be forced to vacate a unit.

Use Restriction

The Purchaser (Owner) **must maintain the property as affordable rental housing** for the elderly for a period of twenty (20) years after the date of this Deed or such earlier time as the Secretary may specify in writing (the "Restricted Period").

2. Any change to the number or configuration of residential units required to be maintained, as affordable housing must receive prior written approval from HUD.
3. The Purchaser (Owner) will not unreasonably refuse to lease units to, or otherwise discriminate against, very low-income families.

Income Eligibility Limitation

1. During the Restricted Period, the Purchaser (Owner) may not market 50 dwelling units for any purpose other than affordable rental housing without HUD's prior written approval. The Purchaser (Owner) may only rent the affordable units to families with adjusted gross annual incomes that do not exceed eighty percent (80) of the area median income, adjusted for smaller and larger family size.

Maintenance of Rents at Affordable Levels

- (1) For current tenants, affordable means **the lesser of**:
 - (a) For a unit occupied by a very-low income family, the unit rent does not exceed 30 percent (30%) of 50 percent (50%) of the area median income (not necessarily the income of the family), as determined by HUD, with adjustments for smaller and larger families, less a reasonable utility allowance for utilities paid by the tenant; **or**
 - (b) For a unit occupied by a low-income family that is not a very low-income family, the unit rent does not exceed 30 percent (30%) of 80 percent (80%) of the area median income (not necessarily the income of the family), as determined by HUD, with adjustments for smaller and larger families size, less a reasonable utility allowance for utilities paid by the tenant; **or**
 - (c) The Section 8 Voucher Payment Standard less the utility allowance established by the voucher provider; **or**
 - (d) Market Rent in the immediate area established by a rent comparability study prepared, at the Purchaser/Owner's expense, in accordance with HUD requirements.
- (2) For new, turnover tenants, affordable rent means the least of:
 - (a) The unit rent does not exceed 30 percent (30%) of eighty percent (80%) of the area median income (not necessarily the income of the family), as determined by HUD, with adjustments for smaller and larger family size, less a reasonable utility allowance for utilities paid by the tenant; **or**
 - (b) The Section 8 Voucher Payment Standard (less utility allowance established by the voucher provider); **or**
 - (c) Market Rent in the immediate area established by a rent comparability study prepared, at the Purchaser's/Owner's expense, in accordance with HUD requirements.

Annual Certification

The Purchaser (Owner) shall certify to HUD annually, in a manner acceptable to HUD, that the requirements in the above paragraphs have been fulfilled.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER ____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

POST-CLOSING REPAIR ESCROW REQUIREMENTS

The Use Agreement shall include the following provisions:

1. Purchaser covenants to complete required repairs within eighteen (18) months of Closing. To ensure completion, the Purchaser shall provide to HUD, at Closing, one of the following, as determined by HUD:
 - a. Unconditional, irrevocable and non-documentary Letter of Credit (LOC):
 - (1) an unconditional, irrevocable and non-documentary Letter of Credit (LOC) in the amount of \$31,755, with an expiration date at least six (6) months beyond HUD's estimated date for completion of repairs. In the event an extension for completion of repairs is granted, the LOC will be extended accordingly. HUD may cash the LOC and apply the funds to correct latent defects in the completed repairs if the Purchaser is unable or unwilling to make such repairs within the six month period, or for such purposes as HUD deems appropriate; or,
 - (2) if repairs are performed in stages, as agreed between Purchaser and HUD prior to Closing, up to five (5) LOCs may be provided to HUD. The first LOC will be equal to at least ten percent (10%) of the total estimated repair costs and such LOC shall remain in effect for a period of six (6) months after the work has been completed to HUD's satisfaction. If the Purchaser is unable or unwilling to make such repairs within the six-month period, HUD may cash this LOC and apply the funds to correct latent defects in the completed repairs, or for such purposes as HUD deems appropriate. The remaining LOCs provided to HUD will be in equal dollar amounts, the sum of which will equal the total required LOC amount specified in paragraph (1) less the first LOC detailed above. Each of these remaining LOCs will have an expiration date at least six (6) months beyond the estimated completion date for repairs. The LOCs shall be returned to the Purchaser after the repairs have been completed to HUD's satisfaction.
 - b. Performance and payment bonds meeting State and local codes as assurance of completion for post-closing repair requirements, as listed on Form HUD-9552 and its exhibits, or form HUD 9822.

Purchaser must use HUD Form-92452 for the payment bond and a form for the performance bond that is acceptable to HUD.

 - (1) Evidence of the existence of payment and performance bonds each in the amount of \$127,021 [the total cost of repairs] must be provided to HUD.
 - (2) Purchaser must follow the following requirements:
 - i. The surety entity issuing the bonds must be included on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1 of each year;
 - ii. The payment and performance bonds must not exceed limits listed in the Circular;
 - iii. The payment and performance bonds must show HUD as payee, along with Purchaser's mortgagee, at the mortgagee's request.
2. If the Purchaser fails to complete repairs in accordance with this Agreement, the Secretary will not exercise the remedies as described in paragraph 1a(1), or request payment on the bonds secured under paragraph 1b, above, if any lender holding a lien or security interest on the Project:
 - a. Gives written notice to HUD within the period provided for repairs, that it intends to complete the repairs, and
 - b. Completes such repairs within 30 days of the notice or within such longer periods that HUD may approve in writing.
3. The Purchaser covenants not to increase the rent for any unit, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth above.

By initialing hereunder, the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER ____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT ____

RIDER 3 OF 8
RELOCATION

The Use Agreement shall include the following provisions:

Relocation Restriction

The Purchaser covenants that it will comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §17012-11(f), and the regulations thereunder, 24 CFR §§290.45 and 290.47, as explained in paragraphs 2 through 5, below. Additionally, the Purchaser covenants it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations.

- (1) The Purchaser covenants that the Property will be rehabilitated within eighteen (18) months from the date of this Use Agreement in accordance with all applicable State and local laws, codes, ordinances and regulations [and Housing Quality Standards pursuant to 24 CFR Part 886, Subpart C, and other requirements set forth in any Property Improvements Requirements sheet, attached hereto].
- (2) If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- (3) If temporary relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit which, to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
 - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
 - (b) Expenses of returning to a repaired unit on the Property.
- (4) If permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
 - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Property.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household size and the circumstances surrounding the move.

HUD will not provide the Purchaser with any funds or subsidy with which to make the payments required by this paragraph.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER _____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

RIDER 4 OF 8
ASBESTOS HAZARDS

The Use Agreement shall include the following provisions:

- (1) Purchaser agrees to indemnify defend, and hold Seller harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of asbestos health hazards, the prohibition against the use of asbestos and Purchaser's responsibility for complying with applicable State and local asbestos laws and regulations.
- (2) If temporary or permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(f), and the regulations thereunder, 24 CFR §§290.45 and 290.47, as explained in paragraphs 4 through 6, below. Additionally, the Purchaser covenants that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by the Seller. The Purchaser is responsible for ensuring compliance with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Purchaser covenants that it will provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- (3) If temporary relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit which, to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
 - (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
 - (b) Expenses of returning to a repaired unit on the Property.
- (4) If permanent relocation is necessary because of such rehabilitation, Purchaser covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
 - (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Property.
 - (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by Seller to be reasonable considering the size of the household and the circumstances surrounding the move.
- (5) The Purchaser covenants not to increase the rent for any units, from the rent Seller is requiring a tenant to pay on the Closing date, until such unit meets all the rehabilitation requirements set forth in (1), above. (In addition, rent for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.)
- (6) If Purchaser fails to comply with (1), above, and no extension by written agreement has been granted by Seller, Seller and his successors in office shall be entitled to enter and terminate the estate hereby conveyed.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER _____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

RIDER 5 OF 8
LEAD-BASED PAINT HAZARDS

The Use Agreement shall include the following provisions:

- (1) In order to comply with 42 USC §§4821-4886 and the regulations thereunder, 24 CFR Part 35 (the "Regulations"), (applicable as checked)
- ☐ Purchaser covenants that the Property will be inspected and tested for lead-based paint, and any hazards will be abated in accordance with the Regulations.
- ☒ Purchaser covenants that any lead-based paint hazards will be abated in accordance with the Regulations.
- Purchaser shall certify to Seller (in a form acceptable to Seller) and Seller shall determine, through its inspection (or at its discretion, the inspection and certification of a local government official) that all lead based-paint hazards have been removed from the Property in accordance with the Regulations.**
- (2) Purchaser understands and agrees that Seller's inspection and finding of satisfactory performance is not intended to and does not constitute a guarantee that all lead based-paint and all potential lead-based paint hazards have been eliminated from the Property and does not relieve Purchaser of its ongoing responsibility for complying with all applicable State and local lead based-paint laws and regulations.
- (3) Purchaser agrees to indemnify defend, and hold Seller harmless from any liability arising by reason of Purchaser's failure to perform Purchaser's obligations under this Deed with respect to the elimination of lead based-paint health hazards, the prohibition against the use of lead based-paint, and Purchaser's responsibility for complying with applicable State and local lead based-paint laws and regulations.
- (4) If temporary or permanent relocation is necessary because of such abatement, Purchaser covenants that it will comply with paragraphs 5 through 8, below. Additionally, the Purchaser covenants that it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Act"), as amended, 42 USC §4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by the Seller. The Purchaser is responsible for ensuring compliance with the Act and regulations thereunder, notwithstanding any contractual obligations with third parties to comply with the Act and regulations. Purchaser covenants that it will provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- (5) If temporary relocation is necessary because of such abatement, Purchaser covenants that it will provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit which, to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
- (a) Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
- (b) Expenses of returning to a repaired unit on the Property.
- (6) If permanent relocation is necessary because of such abatement, Purchaser covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
- (a) Advisory services, necessary to locate decent, safe and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Property.
- (b) Reimbursement for reasonable moving expenses, which need not exceed an amount determined by Seller to be reasonable considering the size of the household size and the circumstances surrounding the move.
- (7) The Purchaser covenants not to increase the rent for any units, from the rent Seller is requiring a tenant to pay on the Closing date, until such unit meets all the abatement requirements set forth in (1), above. (In addition, rent for units to be covered by a Housing Assistance Payments Contract may be increased only pursuant to and following execution of such Contract.)
- (8) Purchaser agrees to comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgment of Disclosure" of 24 CFR - *Lead-Based Paint Poisoning Prevention in Certain Residential Structures*.
- (9) If Purchaser fails to comply with (1), above, and no extension by written agreement has been granted by Seller, Seller and his successors in office shall be entitled to enter and terminate the estate hereby conveyed.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER _____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

PROJECTS PRIMARILY OCCUPIED BY THE ELDERLY

The Use Agreement shall include the following provisions:

The Purchaser covenants that 100% of the units in the Property will be maintained as rental housing for elderly families and individuals for a period of (20) years after the date of the Deed or such earlier time as the Seller may specify in writing (the "Restricted Period"). Any change in the number of units must receive the prior written approval of the Seller.

The Purchaser covenants that it will market affirmatively 100% of the units in the project to families whose head, spouse or sole member is a person aged 62 or older.

If the Purchaser has made reasonable efforts to lease units to eligible families and is unable to achieve or maintain an adequate level of occupancy sufficient to operate the property, the Purchaser may permit occupancy of units in the project to persons aged 55 or older with the prior written approval of the seller.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER ____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT _____

RESERVE ACCOUNT

The Deed shall include the following provisions:

The Purchaser will deposit at Closing **\$15,300** into a Reserve Fund for Replacement Account. After completion of all repairs, Owner will be required to deposit **\$15,300** annually into the Reserve Fund for Replacements Account, payable monthly in an amount of **\$1,275** per month, commencing the first day of the first month following completion of all repairs required by Seller on HUD form 9552. If the terms of the sale did not require completion of specific repairs on HUD form 9552, payments must commence the second month the purchaser vouchers for Section 8 assistance.

Each account will be an interest-bearing bank account and fully guaranteed as to the principal by the United States of America. The Reserve Account shall aid in funding extraordinary maintenance and repair and replacement of capital items. Such items include, but are not limited to: appliances, heating and cooling equipment, new floor covering, structural repairs, and roofs.

The Reserve for Replacement account shall be subject to the control of HUD and disbursements from such funds may be made only with the written consent of the Seller, which will not be unreasonably withheld. Purchaser may request the release of funds from the Reserve for Replacement account for reimbursement of major capital expenditures.

Within sixty (60) days following the end of each fiscal year, HUD will be furnished with a complete annual financial report including deposits and withdrawals from the Reserve for Replacement account based upon an examination of the books and records of the Purchaser prepared in accordance with the requirements of HUD, prepared and certified to by a Certified Public Accountant.

The Purchaser agrees to comply with the HUD's rules and regulations concerning replacement reserves and surplus cash.

The requirements of this rider will terminate if the Housing Assistance Payments Contract is terminated or expires and is not renewed or twenty (20) years from the date of this deed whichever occurs first.

By initialing hereunder the parties acknowledge tat this Rider is incorporated into and is part of the Use Agreement.

Purchaser_____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT_____

RIDER 8 OF 8
PROJECT-BASED SECTION 8 ASSISTANCE

The Deed shall include the following provisions:

The Purchaser, successor and assignee agrees to rehabilitate/repair the property to make the project units decent, safe and sanitary as defined by HUD and to complete the work in accordance with the HUD approved work write up and cost estimates. Upon the acceptable completion of the project, the Purchaser may bill the Department for housing assistance payments to enable low income persons (50) to occupy the units assisted under the Housing Assistance Payments (HAP) Contract.

SECTION 1

1. Significant Dates, Contents, and Scope of Agreement.

- a) Effective Date of Agreement: _____
- b) Date for Commencement of Work – Not later than 14 calendar days after the effective date of this Rider
- c) The property must be brought into compliance with 24 CFR Part 5 Uniform Physical Standard not later than 180 calendar days (not to exceed 6 months) after the date for commencement of work.
- d) All required repairs listed on HUD-9552 and its exhibits, or Form HUD-9882, must be satisfactorily completed within eighteen (18) months of commencement of work.
- e) Final Inspection. HUD (or its designee) shall perform the final inspection of the completed units upon receipt of evidence of completion submitted by the Purchaser.

2. HUD Assurance. The acceptance of this Rider by HUD is an assurance by HUD to the Purchaser that:

- a) The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to the Contract, and
- b) HUD has obligated funds for these payments.

3. The purchaser's Failure to Comply with Rider. In addition to other remedies available to HUD in this Deed/Use Agreement for a default by the Purchaser, the Purchaser and HUD agree that if the Purchaser fails to comply with the requirements of this Rider, HUD may rescind the sale of the project or take other appropriate remedial action in accordance with its authority.

SECTION TWO

1. Schedule of Completion.

- a. Timely Performance of Work. The Purchaser agrees to begin within the time indicated in Section 1 of this Rider. The Purchaser shall report to the Multifamily Property Disposition Center the date work has commenced and shall thereafter furnish the Multifamily Property Disposition Center with periodic progress reports (monthly unless more frequent reporting is required by the Multifamily Property Disposition Center). In the event the work is not commenced, diligently continued, or completed as required under this Rider, HUD reserves the right to rescind the sale or take other appropriate action it determines acceptable and within its authority.

2. Construction or Rehabilitation Period

- a. Inspections. Inspections will be limited to no more than 1 per month. Upon written notification from HUD that the property or individual units are in compliance with Uniform Physical Condition Standards, the Purchaser may begin billing for HAP payments. Payments may be retroactive to the inspection date for occupied units and the effective lease date for vacant units. At no time may payments be made for units that do not meet HUD's Uniform Physical Standard.
- b. Completion of work is repairs/items necessary to bring the property into compliance with 24 CFR Part 5 Uniform Physical Standard. Repairs/items may not be inclusive of the total repair requirement for the project and may not constitute release of any or all letter(s) of credit required under a Post Closing Repair Rider. Completion of work is repairs/items necessary to bring the property into compliance with 24 CFR Part 5

Uniform Physical Standard. Repairs/items may not be inclusive of the total repair requirement for the project and may not constitute release of any or all letter(s) of credit required under a Post Closing Repair Rider.

3. Project Completion.

- a. The project shall be rehabilitated in accordance with the Uniform Physical Standard 24 CFR Part 5, as well as all required repairs listed on HUD-9552 and its exhibits, or Form HUD-9822. The Purchaser shall be solely responsible for rehabilitation of the project.
- b. The project shall be in good and tenantable condition.
- c. The project shall be rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

4. Review and Inspection.

- a. Upon receipt of the notification and the evidence of completion, HUD shall review the evidence of completion for adequacy.
- b. A HUD representative (or its designee) shall inspect the project in a manner sufficient to enable the inspector to report that he or she has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection
 - i. The project has been completed in accordance with this Rider and that
 - ii. There are no observable conditions inconsistent with the evidence of completion, including the certification of the Purchaser. If the inspection disclosed defects or deficiencies, the inspector shall report these in detail.
- c. Unconditional Acceptance. If HUD determines from the review and inspection that the project has been completed in accordance with this Rider, the Purchaser and the HUD Field Office (having jurisdiction over the property) shall be promptly notified of the units deemed acceptable and the date of said inspection.
- d. Notification of Non-acceptance. If HUD determines that, based on the review of the evidence of completion and inspection, the project cannot be accepted, the Purchaser shall be promptly notified of this decision with a statement of the reasons.
- e. Contract Rents. The Contract Rents by unit size, amounts of housing assistance payments, and other applicable terms and conditions shall be specified in the proposed Housing Assistance Payments Contract. The Contract Rents will be the amounts established by HUD and published for the sale.

5. Defaults. Any default under this Rider constitutes a default under the Housing Assistance Payments (HAP) Contract even in the event no funds have been requested and/or paid from said Contract. Any or all remedies outlined in the Contract specifically Part 2 Section 16(b) are the remedies that are applicable to a default under this Rider.

6. Assignments, Sale or Foreclosure

- a. The Purchaser agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Rider, the Contract or the project all or in part of them or any of its interest in them, without the prior written consent of HUD (and the PHA where it is the CA and/or PBCA); however, in the case of an assignment as security for the purposes of obtaining financing of the project, HUD (and the PHA where it is the CA and/or PBCA) shall consent in writing if HUD has approved the terms of such financing.
- b. The Purchaser agrees to notify HUD (and the PHA where it is the CA and/or PBCA) promptly of any proposed action covered by Part 2 provision 6(a). The Purchaser further agrees to request the prior written consent of HUD (and the PHA where it is the CA and/or PBCA).
- c. (i) For the purposes of this part, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
 1. Transfer by the Purchaser, in whole or in part.
 2. A transfer by a party having a substantial interest in the Purchaser.
 3. Transfers by more than one party of interest aggregating a substantial interest in the Purchaser,
 4. Any other similarly significant change in the ownership of interest in the Purchaser or in the relative distribution of interest by any other method or means and

5. Any refinancing by the Purchaser of the project.
- ii. An assignment by the Purchaser to a limited partnership, in which no limited partner has 25 percent or more interest and of which the Purchaser is the sole general partner, shall not be considered an assignment, conveyance, or transfer. As assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.
- iii. The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.
- d. The Purchaser, and the party executing this Rider on behalf of the Purchaser, represent that they have the authority of all of the parties having ownership interests in the Purchaser to agree to this Rider on their behalf and to bind them with respect to it.
- e. Except where otherwise approved by HUD, this Rider, and the Contract shall continue in effect in the event:
 - i. Of assignment, sale, or other disposition of the project or this Rider or the Contract,
 - ii. Of foreclosure, including foreclosure by HUD,
 - iii. Of assignment of the mortgage or deed in lieu of foreclosure, or
 - iv. The PHA or HUD takes over possession, operation or ownership.

SECTION THREE

1. Project-based Section 8 Assistance
 - a. A Housing Assistance Payments (HAP) Contract will be executed at closing. The HAP Contract will cover 50 units in the Property, as specified by HUD.
 - b. The HAP Contract shall provide that, when a vacancy occurs in any unit in the property requiring project-based Section 8 assistance, Purchaser shall rent the unit to a family that is eligible for said Section 8 assistance under the HAP Contract.
 - c. The Purchaser agrees that, for any property formerly insured under Section 221(d)(3) or 236 of the National Housing Act, or for which a direct loan under Section 202 of the Housing Act of 1959 was made, any unit in the Property that does not receive project-based Section 8 assistance shall remain available and affordable for a period of 20 years, or such longer period under the terms of the Affordability of Units Rider.
 - d. The Purchaser agrees that at anytime the HAP Contract expires, is terminated or not renewed; the affordability rider will become applicable to the units previously covered under the HAP Contract. The purchaser may reduce the term of the rider for such units by the collective term(s) of the HAP Contract and any subsequent renewals effective after this sale.
2. The Purchaser cannot voucher for Section 8 HAP payments until HUD has inspected the units and determined that they meet the Uniform Physical Condition Standards (UPCS) of the HAP Contract. Section 8 assistance payments will not be made retroactive to the date of closing. Assistance/subsidy will only be paid from the date the unit(s) was determined to meet the Uniform Physical Condition Standard (as per Section 2 Provisions 2 and 4).
3. Prior to receipt of subsidy payments, Purchaser shall not charge Section 8 eligible tenants more than the amount of the Total Tenant Payment (per the form HUD 50059) the tenant would be required to pay under the Section 8 program.
4. Other Government Assistance and Adjustments in Project-Based Section 8 Assistance
 - a. In order to comply with Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and the regulations thereunder, 24 CFR Part 12, Purchaser covenants that it will disclose to Seller:
 - i. Any Federal, State or local governmental assistance, other than the Section 8 assistance provided under the terms of this Deed, that it will receive or

reasonably expects to receive prior to or during the term of the Section 8 HAP Contract.

- ii. In cases where the Purchaser will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available for the Property. Such other assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect governmental assistance.
 - b. In order to comply with this requirement, the Grantee, within 10 working days after receiving notice that it has been selected to purchase the Property, must complete and execute a Certification of Disclosure.
 - c. Within 30 calendar days of any changes in circumstances occurring at any time before or during the term of the Section 8 HAP Contract that affect the accuracy of the Certification of Disclosure, the Purchaser shall submit to HUD a revised Certification. HUD may reduce the amount of Section 8 assistance provided for the Property to compensate in whole or in part, as HUD deems appropriate, for any increases in other assistance.
5. Affordability and Availability of Project-based Section 8 Units. In order to assure compliance with 12 USC §1701z-11, the Secretary of Housing and Urban Development, pursuant to a HAP Contract, will provide housing assistance under Section 8 of the United States Housing Act of 1937 (42 USC §1437f) for the Property. During the term of the HAP Contract, the Purchaser shall maintain all dwelling units covered thereby after the date of this Deed in accordance with the requirements of the HAP Contract and the Section 8 Housing Assistance Payments Program For The Elderly (24 CFR Part 891(e)). Any inconsistencies between the CFR (cited above) and the HAP Contract, the HAP Contract will prevail.

The Purchaser shall not remove any existing tenant solely due to the tenant's ineligibility for Section 8 assistance, so long as the tenant remains in good standing. However, if an existing Section 8 ineligible tenant moves/relocates from the property, the purchaser shall rent the unit to a Section 8 (24 CFR Part 891.575) eligible family, if the unit is assisted under the HAP Contract. This provision shall be enforceable by HUD, Eligible Families or any other tenants on the Property.

6. The purchaser agrees to request and accept project-based Section 8 assistance and shall execute a Housing Assistance Payment contract at closing.

Should the purchaser elect not to renew the HAP Contract or any subsequent rental assistance offered by HUD, current or future residents who are or would have been eligible for the project based assistance shall not be required to pay rent in excess of the amount that would have been required if the assistance was in place. All units that were assisted under the HAP Contract(s) are restricted for the term of the Use Agreement to occupancy by eligible families with income at or below 80% of the area median income and rent payments by these families shall be in accordance with the Affordability Rider 1 of 8.

By initialing hereunder, the parties acknowledge that this Rider is incorporated into and is a part of the Use Agreement.

PURCHASER ____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT ____

ATTACHMENT D
LETTER OF CREDIT (LoC) SAMPLE

(ISSUING BANK'S LETTERHEAD)

IRREVOCABLE UNCONDITIONAL LETTER OF CREDIT NO. _____
_____, 20____

U.S. Department of Housing and Urban Development
Five Points Plaza, 40 Marietta Street
Atlanta, GA 30303-2186

Attention: Mr. William H. Melvin, Director
Atlanta Multifamily Property Disposition Center

Dear Sir:

For the account of _____
(name of account party/customer)
we hereby authorize you to draw on us at sight up to an aggregate amount of U.S. \$ _____,
effective immediately and expiring on _____, 20____.

This Letter of Credit is irrevocable and unconditional.

Funds under this Credit are available to you against your sight draft(s) on us, substantially in the form attached as Exhibit A, for all or any part of this Credit.

This Letter of Credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We will promptly honor all drafts in compliance with the terms of this credit if received on or before the expiration date at

(bank's address)

This Credit is governed by the laws of _____.

Sincerely,

(Issuing Bank)

By: _____

SAMPLE SIGHT DRAFT

(HUD LETTERHEAD)

(Name and address of bank) _____
(City, State)

_____, 20____

Pay to the order of the U.S. Department of Housing and Urban Development the sum of
\$_____. This draft is drawn under your Irrevocable Letter of Credit

NO._____.

U.S. Department of Housing and Urban Development

By:_____

ATTACHMENT E

Post-Closing Repair Requirements

U.S. Department of Housing and Urban Development

Office of Housing Multifamily Sales Program

Project Name BARKLEY GARDENS APTS.	Project Number 012-35472	Location LIBERTY, NY
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The Purchaser must repair the property to meet the following requirements within the time frame noted in the Contract of Sale or Terms and Requirements Foreclosure Sale- Acknowledgement by Bidder

☒ Applicable State & Local Code ☒ Housing Quality Standards (HQS) as set forth in CFR 886, Subpart C ☒ Additional repairs required by HUD

HUD will monitor repairs to assure compliance. Repairs shall be considered completed only after: (1) Purchaser provides written Certification that repairs are completed; (2) Purchaser requests final inspection by HUD; and, (3) HUD verifies in writing completion and compliance with the requirements stated herein

Trade Item Cost Breakdown: HUD's estimate of repairs is broken out by trade item. Detailed descriptions of repairs are stated in this form's exhibits. Unless checked as MANDATORY on this form, repairs may begin upon conveyance. For repair items listed in this form as MANDATORY, the purchaser, prior to beginning work, must submit specifications for approval to the HUD office with jurisdiction over this project.

The repairs listed herein represent HUD's estimate of the property's repair needs. These repairs may not represent all repairs needed to satisfy all requirements and/or requirements other than HUD's. HUD does NOT warrant that the list is either comprehensive or sufficient. The purchaser accepts responsibility for: (1) developing his/her own repair cost estimate, (2) determining what, if any, repairs are needed in excess of those listed herein, and (3) providing funding for such repairs.

Item	Mandatory	Est. Cost	Item	Mandatory	Est. Cost
X Repairs to Residential Structures (including commercial areas)					
1. Concrete		\$0.00	17. Wood Flooring		\$0.00
2. Masonry		\$0.00	18. Resilient Flooring		\$0.00
3. Metals		\$0.00	19. Painting & Decorating		\$5,800.00
4. Rough Carpentry		\$0.00	20. Specialties		\$0.00
5. Finish Carpentry		\$0.00	21. Special Equipment		\$0.00
6. Waterproofing		\$0.00	22. Cabinets		\$18,016.00
7. Insulation		\$0.00	23. Appliances		\$6,680.00
8. Roofing		\$0.00	24. Blinds & Shades		\$0.00
9. Sheet Metal		\$0.00	25. Carpets		\$0.00
10. Doors		\$0.00	26. Special Construction	X	\$6,000.00
11. Windows		\$0.00	27. Elevators		\$65,000.00
12. Glass		\$0.00	28. Plumbing & Hot Water		\$2,700.00
13. Lath & Plaster		\$0.00	29. Heat & Ventilation		\$0.00
14. Drywall		\$0.00	30. Air Conditioning	X	\$0.00
15. Tile Work		\$0.00	31. Electrical	X	\$3,862.00
16. Acoustical		\$0.00	Residential Structures Subtotal		\$108,058.00
Repairs to Accessory Structures (community, maintenance, mechanical, garages, carports, etc.)					
32. Accessory Structures		\$0.00	Accessory Structures Subtotal		\$0.00
Site Work					
33. Earth work		\$0.00	36. Site Improvements		\$3,000.00
34. Site Utilities		\$0.00	37. Lawns & Plantings		\$0.00
35. Roads & walks	X	\$960.00	38. Unusual Site Conditions		\$0.00
			Site Work Subtotal		\$3,960.00
Environmental Mitigation					
39. Lead-Based Paint		\$0.00	Totals		\$112,768.00
40. Asbestos		\$0.00	Inflation Factor (2.4%)		2,706
41 O & M Plan	X	\$750.00	Est. Total Hard Cost		\$115,474.00
Environmental Mitigation Subtotal		\$750.00	Contingency = Hard Cost x 10%		\$11,547.00
			Ovhd/Gen = Hard Cost x 18%		\$0.00
			Est. Total Repair Cost		\$127,021.00

Previous edition is obsolete

form HUD-9552 (5/93)

DELIVERY ORDER: ATL 872

ISSUE DATE: 04 / 13 / 06

FHA CASE NO: 012-35472

CONSTRUCTION ITEMS SUMMARY	Form 9552 CODE	Unit	Per Item Cost (\$)	Quantity	Total Cost Per Item	Cost Per Division	HEALTH & SAFETY
DIVISION 1 - NO ENTRY							
DIVISION 2 - SITE WORK							
01080E* Provide an O & M Plan	41	EA	750.00	1	750		YES
02512E Replace Concrete Walk	35	SF	10.00	36	360		
02514E* Replace Section of Patio	35	SF	10.00	60	600		
02516E* Provide Dumpster Pad	36	EA	3,000.00	1	3,000	4,710	
DIVISION 3 - NO ENTRY							
DIVISION 4 - NO ENTRY							
DIVISION 5 - NO ENTRY							
DIIVISION 6 - WOOD AND PLASTIC							
06410A* Replace Kitchen Counter	22	LF	43.00	32	1,376		
06412A* Replace Kitchen Cabinets	22	LF	260.00	64	16,640	18,016	
DIVISION 7 - NO ENTRY							
DIVISION 8 - NO ENTRY							
DIVISION 9 - FINISHES							
09902A* Paint Interior	19	LS	5,000.00	1	5,000		
09903E* Paint Exterior	19	LS	800.00	1	800	5,800	
DIVISION 10 - NO ENTRY							
DIVISION 11 - EQUIPMENT							
11401A* Replace Range	23	EA	430.00	4	1,720		
11403A* Replace Refrigerator	23	EA	620.00	8	4,960	6,680	
DIVISION 12 - NO ENTRY	24						
DIVISION 13 - SPECIAL CONSTRUCTION							
13008A* Provide For Physical Handicap	26	EA	1,500.00	4	6,000	6,000	
DIVISION 14 - CONVEYING							
142001* Elevators	27	EA	65,000.00	1	65,000	65,000	
DIVISION 15 - MECHANICAL							
15216A* Replace Sink Valves and Trim	28	LS	700.00	1	700		
15217A* Replace Lavatory Valves and Trim	28	LS	700.00	1	700		
15218A* Replace Tub Valves and Trim	28	LS	1,000.00	1	1,000		
15219A* Replace water Closet Valves and Trim	28	LS	300.00	1	300	2,700	

DIVISION 16 - ELECTRICAL							
16205A*	Replace Elactric Panel Breakers	31	LS	1,000.00	1	1,000	
16208A*	Replace Electrical Devices	31	LS	1,200.00	1	1,200	
16616A	Replace Light Fixture	31	EA	78.00	4	312	
16640E*	Replace Pole-Mtd Light Fix.	31	EA	350.00	1	350	
16750A*	Repair Baseboard Heaters	31	LS	1,000.00	1	1,000	3,862

TOTAL COST	112,768
INFLATION	
(2.4%)	2,706
SUB-	
TOTAL	115,474
OH & DESIGN FEES (0%)	0
CONTINGENCY (10%)	11,547
TOTAL PROJECT COST	127,021

ATTACHMENT F
Certification of Substantial Compliance

To: United States Department of Housing and Urban Development

From: _____ ("High Bidder")

I Certify to HUD that any and all projects that are owned by High Bidder or its affiliates and are located in the same jurisdiction as _____ are in substantial compliance with applicable state and/or local housing statutes, regulations, ordinances and codes an are listed on Schedule A attached hereto.

I understand that HUD may, in its discretion, verify the accuracy of this certification and request supporting documentation from High Bidder. It is understood that if HUD determines, in its sole discretion, that such other projects as listed on Schedule A are not in substantial compliance, HUD will have the right to refuse to sell the project to High Bidder.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

By: _____

Name:

Title:

Address:

Telephone Number:

Certification of Substantial Compliance

Schedule A: All projects owned by high bidder or affiliates and are located in the same jurisdiction as the subject property.

1. List each project name	2. List name of principal or affiliate with ownership of project.	3. List project address

ATTACHMENT G

U.S. Department Of Housing And Urban Development
Office of Housing

Property Disposition

Property Primarily Occupied By
Elderly Or Disabled Families

Federal Fiscal Year 2006

SECTION 8
PROJECT-BASED RENTAL ASSISTANCE
HOUSING ASSISTANCE PAYMENTS CONTRACT

PREPARATION OF HAP CONTRACT

Instructions on preparation of the HAP contract are attached at the end of the HAP contract text. Reference numbers in the text of section 1 of the contract refer to notes at the end of the contract text.

U.S. Department Of Housing And Urban Development

Property Disposition

Project Primarily Occupied By
Elderly Or Disabled Families

Federal Fiscal Year 2006

SECTION 8
PROJECT-BASED RENTAL ASSISTANCE

HOUSING ASSISTANCE PAYMENT CONTRACT

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U.S. Department Of Housing and Urban Development
Office of Housing

Property Disposition

SECTION 8
PROJECT-BASED RENTAL ASSISTANCE

HOUSING ASSISTANCE PAYMENTS CONTRACT
PART 1 OF HAP CONTRACT

CONTRACT INFORMATIONⁱ

Property

Section 8 HAP Contract Number (same as old HAP contract number):

NY360019005

Section 8 Project Type from old HAP Contract: 221 (d)(4)

FHA Project Number (if applicable): 012-35472

Project Name: Barkley Gardens Apartments

Property Descriptionⁱⁱ

Barkley Gardens Apartments is located at 280 North Main Street, Liberty, NY 12754. The property consist of 51 studio, one bedroom & two bedroom low income elderly housing apartments in a single 5 story (total) building on a single 1.2 acre tract in Liberty, New York. For additional information see legal description. Exhibit A to Attachment C.

Contents of contract

This is a housing assistance payments contract (HAP contract) between HUD and the owner. The HAP contract consists of Part 1, Part 2 and the contract exhibits listed in paragraph c.

Contract exhibits

The HAP contract includes the following exhibits:

Exhibit A Description of contract units

This exhibit specifies the NUMBER OF contract UNITS BY Unit size (number of bedrooms), and applicable initial contract rents.ⁱⁱⁱ

Exhibit B Services, maintenance and utilities to be provided by the owner

Additional exhibits:^{iv}

Effective date and term of HAP Contract

Effective Date

- 1) For all contract units, the effective date of the HAP contract is: _____.
- 2) The term of the HAP contract begins on the effective date.

Length of term

The length of the term of the HAP contract for all contract units is: 1 Year.

Anniversary date

The "anniversary date" of the HAP contract is: _____.

EXECUTION OF HAP CONTRACT

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
(HUD)**

By: _____

Signature of authorized representative

Name and official title (Print)

Date _____

OWNER

Name of Owner (Print)

By _____

Signature of authorized representative

Name and title (Print)

Date _____

U.S. Department Of Housing and Urban Development
Office of Housing

Property Disposition

SECTION 8
PROJECT-BASED RENTAL ASSISTANCE

HOUSING ASSISTANCE PAYMENTS CONTRACT
PART 2 OF HAP CONTRACT

DEFINITIONS

CA. Contract administrator. The agency that has entered into the HAP contract with the owner. The agency is HUD or a public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

Contract rent. The total monthly rent payable to the owner for a contract unit, including the tenant rent. Contract rent includes payment for any housing services, maintenance and utilities to be provided by the owner in accordance with the HAP Contract.

Contract units. The housing units covered by this HAP contract. The contract units are described in Exhibit A by unit size (number of bedrooms) and applicable initial contract rents.

Family. The persons approved by the CA to reside in a contract unit with assistance under the program.

HAP contract. This housing assistance payments contract between the CA and the owner. The contract consists of Part 1, Part 2, and the contract exhibits (listed in paragraph 1.c of the HAP contract).

HUD. U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

PHA. A public housing agency (as defined and qualified in accordance with the United States Housing Act of 1937. 42 U.S.C. 1437 et seq.).

Physical condition standards (UPCS). The HUD minimum physical condition standards for dwelling units occupied by families receiving Section 8 project-based assistance.

Premises. The building or complex in which a contract unit is located, including common areas or grounds.

Principal or interested party. This term includes a management agent and other persons or entities participating in property management, and the officers and principal members, shareholders, investors, and other parties having a substantial interest in the HAP contract, or in any proceeds or benefits arising from the HAP contract.

Property. The housing designated in paragraph 1.a of the HAP contract.

Section 8. Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Section 213. Section 213 of the Administrative Provisions at Division K, Title II of the Consolidated Appropriations Resolution, 2003 (H.J. Res. 2).

Tenant rent. The portion of the contract rent payable by the family, as determined by the CA in accordance with HUD requirements. The CA is not responsible for paying any part of the tenant rent.

PURPOSE

- 1) This is a HAP contract between HUD and the owner. The HAP contract is entered pursuant to Section 8 and Section 213.
- 2) Section 213 provides that in fiscal year 2003, in managing and disposing of any multifamily property that is owned or held by the Secretary of HUD, and is occupied primarily by elderly or disabled families, the Secretary shall maintain any project-based rental assistance payments under Section 8.
- 3) The contract units are located in a multifamily property. HUD has conveyed the property to the owner. Prior to HUD acquisition of the property, occupancy of the contract units had been assisted by project-based rental assistance payments under Section 8. At execution of the HAP contract, the contract units and the property are primarily occupied by elderly or disabled families. The HAP contract is entered to maintain Section 8 project-based rental assistance for the contract units in accordance with Section 213.
- 4) The purpose of the HAP contract is to provide housing assistance payments on behalf of eligible families who lease and occupy contract units that comply with the HUD UPCS. Housing assistance payments will only be paid to the owner for contract units occupied by eligible families who lease contract units from the owner in accordance with statutory requirements, and with all HUD regulations and other HUD requirements.
- 5) Both at the beginning of the contract term and at all times thereafter during the contract term, housing assistance payments will only be paid for contract units that comply with the UPCS. Housing assistance payments will not be paid for any period when the contract units do not comply with the UPCS.
- 6) If HUD is the CA, HUD may, at HUD's discretion, transfer administration of the HAP contract to a public housing agency acting as the CA under an annual contributions contract (ACC) with HUD.
- 7) The CA must make housing assistance payments to the owner in accordance with the HAP contract for contract units leased and occupied by eligible families during the HAP contract term.

OCCUPANCY AND PAYMENT

Payment for occupied unit

During the term of the HAP contract, the CA shall make housing assistance payments to the owner for the months during which a contract unit is leased to and occupied by an eligible family, as determined in accordance with HUD requirements. If an assisted family moves out of a contract unit, the owner may keep the housing assistance payment for the month when the family moves out.

Occupancy by eligible families

During the contract term, the owner shall lease all of the contract units to eligible families. Eligibility shall be determined in accordance with HUD requirements.

Vacancy payment

- 1) The owner may receive housing assistance payments for so much of the month in which the family moves out of a contract unit as the contract unit remains vacant.
- 2) If the unit remains vacant after the move-out month, the owner may receive a housing assistance payment in the amount of 80 percent of the contract rent for a vacancy period not to exceed an additional month after the month when the family moves out. However, if the owner collects any of the tenant rent for this month, the payment for the vacancy period must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the contract rent.
- 3) The owner shall not receive any vacancy payment under this paragraph c, unless the owner:
 - a) Immediately upon learning of the vacancy, has notified the CA of the vacancy, or prospective vacancy, and the reason for the vacancy,
 - b) Takes all feasible actions to fill the vacancy, including contacting applicants on the owner's waiting list, conducting appropriate outreach for eligible families, and advertising the availability of the unit; and
 - c) Has not rejected any eligible applicant, except for good cause acceptable to the CA.

CONTRACT RENT; HOUSING ASSISTANCE PAYMENTS

Amount of initial contract rent

The initial contract rent for each contract unit is stated in Exhibit A of the HAP contract. At the beginning of the HAP contract term, and until the contract rent is adjusted in accordance with section 6 of the HAP contract, the contract rent for each bedroom size (number of bedrooms) shall be the initial contract rent amount listed in Exhibit A.

HUD rent requirements

Notwithstanding any other provision of the HAP contract, the contract rent may in no event exceed the amount authorized in accordance with HUD requirements.

CA payment to owner

- 1) Each month the CA must make a housing assistance payment to the owner for a unit under lease to and occupied by an eligible family in accordance with the HAP contract.

- 2) The monthly housing assistance payment to the owner for a contract unit is equal to the amount by which the contract rent exceeds the tenant rent.
- 3) Payment of the tenant rent is the responsibility of the family. The CA is not responsible for paying any part of the tenant rent, or for paying any other claim by the owner against a family. The CA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract.
- 4) The owner will be paid the housing assistance payment under the HAP contract on or about the first day of the month for which payment is due.
- 5) To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.
- 6) If the CA determines that the owner is not entitled to the payment or any part of it, the CA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner, including amounts due under any other housing assistance payments contract.
- 7) The owner must notify the CA promptly of any overpayment or any change of circumstances that would affect the amount of the monthly housing assistance payment, and must return the amount of any overpayment.

ADJUSTMENT OF CONTRACT RENT

Determination of adjusted rent

- 1) During the term of the HAP contract, the CA shall annually, on the anniversary date, adjust the amount of the monthly contract rents in accordance with HUD requirements by using an OCAF (operating cost adjustment factor); or
- 2) At the request of the owner, based on the budget for the Project and the previous year's audited annual financial statement, a budget-based rent increase as approved by the Contract Administration in accordance with HUD requirements.
- 3) Adjustments by the use of the OCAF shall not result in a negative adjustment (decrease) of the contract rents.
- 4) The owner shall not receive any other adjustment of the contract rent.

Maximum rent

Contract rent for each contract unit, as adjusted annually by the CA in accordance with section 6 of the HAP contract, may at no time exceed reasonable rent, as determined by the CA, charged for comparable units in the private unassisted market.

Owner compliance with HAP contract

The CA shall not approve, and the owner shall not receive, any increase of contract rent unless all contract units are in accordance with the UPCS, and the owner has complied with the terms of the assisted leases and the HAP contract.

Notice of rent adjustment

Contract rent shall be adjusted by written notice by the CA to the owner in accordance with this section. Such notice constitutes an amendment of the rents specified in Exhibit A.

OWNER RESPONSIBILITY

a. The owner is responsible for:

- 1) Performing all management and rental functions for the contract units.
- 2) Selecting tenants.
- 3) Determining tenant eligibility.
- 4) Performing an initial examination and reexamination of family income.
- 5) Calculating the amount of the tenant rent and the housing assistance payment in accordance with the HAP contract and HUD requirements.
- 6) Entering a lease with each assisted tenant.
- 7) Enforcing tenant obligations under the lease.
- 8) Paying for utilities and housing services (unless paid by the tenant in accordance with the HAP contract).
- 9) Collecting from the tenant:
 - a) Any security deposit.
 - b) The tenant rent.
 - c) Any charge for unit damage by the family.
- 10) Paying the family any applicable utility reimbursement for tenant-paid utilities (where the amount of the utility allowance exceeds the amount of the tenant rent).
- 11) Submitting monthly requests for payment in the form and manner required by HUD and the CA.
- 12) Maintaining and accounting for the replacement reserve.

b. The owner shall perform all owner responsibilities in accordance with HUD requirements.

OWNER CERTIFICATION

The owner certifies that at all times during the term of the HAP contract:

- 1) All contract units for which owner is receiving housing assistance payments are in good and tenantable condition, and in accordance with the UPCS. The owner is maintaining the premises and all contract units in accordance with the UPCS.
- 2) The owner is providing all the services, maintenance and utilities as agreed to under the HAP contract and the leases with assisted families.
- 3) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family, and the lease is in accordance with the HAP contract and HUD requirements.
- 4) To the best of the owner's knowledge, the members of an eligible family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
- 5) The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- 6) The amount of any housing assistance payment requested or received by the owner is the correct amount due under the HAP contract.
- 7) The contract rent for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- 8) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payments or other consideration (from the family, the CA, HUD, or any other public or private source) for rental of the contract unit.
- 9) The family does not own, or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.

CONDITION OF UNITS

Owner maintenance and operation

- 1) The owner must maintain and operate the contract units and premises to provide decent, safe and sanitary housing in accordance with the UPCS, including performance of ordinary and extraordinary maintenance.

- 2) Both at the beginning of the contract term, and at all times thereafter during the contract term, the owner shall not request payment for or receive any housing assistance payment for any unit during any period when the unit or premises are not in accordance with the UPCS.
- 3) If the premises or any contract unit is not in compliance with the UPCS at the beginning of the contract term, the owner must promptly perform any ordinary or extraordinary maintenance necessary to bring the unit into compliance with the UPCS. However, the owner shall not request or receive any housing assistance payment with respect to a contract unit for any period when the premises or the unit are not in accordance with the UPCS.
- 4) The owner must provide all the services, maintenance and utilities set forth in Exhibit B, and in the lease with each assisted family.

CA inspection

The CA may inspect the contract units and the premises annually, and at any time the CA deems necessary to assure that the contract units and premises are in accordance with the UPCS, and that the owner is providing the maintenance, utilities, and other services in accordance with the leases and the HAP contract. The CA shall give the owner reasonable notice of the annual inspection.

Violation of UPCS

- 1) If the CA determines that a contract unit is not in accordance with the UPCS, the CA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination, suspension or reduction of housing assistance payments, and termination of the HAP contract. The CA may exercise any contractual remedy respecting a contract unit even if the family continues to occupy the unit.
- 2) The CA shall not make any housing assistance payment for a dwelling unit that fails to meet the UPCS. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any CA-approved extension). The owner shall not request or receive any housing assistance payment for a dwelling unit for any period prior to the correction of any defect.

Maintenance and replacement -- owner's standard practice

Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

LEASING CONTRACT UNITS

- a. During the term of the HAP contract, the owner must lease all contract units to eligible families.
- b. The owner must determine family eligibility in accordance with HUD requirements.
- c. The contract unit leased to each family must be appropriate for the size of the family as determined in accordance with HUD requirements.
- d. If a contract unit was occupied by an eligible family on the effective date of the HAP contract, the owner must offer the family the opportunity to lease the same or another appropriately-sized contract unit with assistance under the HAP contract.
- e. The owner is responsible for screening and selecting tenants.

TENANCY

Lease

The lease between the owner and each assisted family must be in accordance with HUD requirements. The lease must include word-for-word all provisions required by HUD.

Termination of tenancy

- 1) The owner may only terminate a tenancy in accordance with the lease and HUD requirements.

- 2) The owner must give the CA a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used to commence an eviction action under State or local law.

Family payment

- 1) The portion of the monthly contract rent payable by the family ("tenant rent") will be determined by the owner in accordance with HUD requirements. The amount of the tenant rent is subject to change during the term of the HAP contract.
- 2) The amount of the tenant rent as determined by the owner in accordance with HUD requirements is the maximum amount the owner may charge the family for rent of a contract unit, including all housing services, maintenance and utilities to be provided by the owner in accordance with the HAP contract and the lease.
- 3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the owner in accordance with HUD requirements. The owner must immediately return any excess tenant rent payment to the tenant.
- 4) The family is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the CA housing assistance payment.
- 5) The owner is responsible for computing, in accordance with HUD requirements, the amount of the housing assistance payment and the tenant rent for each assisted family.

Other owner charges

The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to an unsubsidized tenant in the premises.

Security deposit

- 1) The owner may collect a security deposit from the family.
- 2) The owner must comply with HUD and CA requirements regarding security deposits from a tenant.
- 3) When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner must promptly refund the full amount of the balance to the family.
- 4) If the security deposit is not sufficient to cover amounts the family owes under the lease, the owner may seek to collect the balance from the tenant.

RESERVE FOR REPLACEMENTS

The owner must establish and maintain a replacement reserve for the property, in the amount required by HUD, to pay for extraordinary maintenance and repair, and for replacement of capital items. The owner must establish, maintain and account for the replacement reserve in accordance with HUD requirements.

OVERCROWDED AND UNDEROCCUPIED UNITS

If a contract unit is not decent, safe and sanitary because of an increase in the family size which causes the unit to be overcrowded, or if a contract unit is larger than appropriate for the size of the family, the owner must offer the family a suitable unit as soon as one becomes vacant and ready for occupancy, and the owner must require the family to move to the appropriate sized unit.

PROHIBITION OF DISCRIMINATION

- a. The owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, creed, religion, sex, national origin, disability or familial status (i.e., because the family includes children).
- b. The owner must comply with the following requirements:
 - 1) The Fair Housing Act (42 U.S.C. 3610 - 3619) and implementing regulations at 24 CFR parts 100, et seq.;
 - 2) Executive Orders 11063, 12259, and 12892 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107;
 - 3) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d - 2000d-4) (prohibition of discrimination in Federally-assisted programs) and implementing regulations at 24 CFR part 1;
 - 4) The Age Discrimination Act of 1975 (42 U.S.C. 6101 - 6107) and implementing regulations at 24 CFR part 146;
 - 5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (prohibition of discrimination because of disability) and implementing regulations at 24 CFR part 8;
 - 6) Executive Orders 11625, 12138, and 12432 (promoting minority and womens' business enterprise);
 - 7) Title II of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) (prohibition of employment discrimination because of disability); and
 - 8) The fair housing advertising poster guidelines at 24 CFR part 110.
- c. The CA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and implementing regulations.

REDUCTION OF CONTRACT UNITS

If the owner fails for a continuous period of six months to have all of the contract units leased or available for leasing by eligible families, the contract administrator may, on thirty (30) calendar days notice, reduce the number of contract units to not less than the number of units under lease to eligible families.

OWNER DEFAULT AND CA REMEDIES

Owner default

Any of the following is a default by the owner under the HAP contract:

- 1) The owner has failed to comply with any obligation under the HAP contract, including the owner's obligations to maintain all contract units in accordance with the UPCS.
- 2) The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
- 3) The owner has committed any fraud or made any false statement to the CA or HUD in connection with the HAP contract.
- 4) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
- 5) If the property is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD:
 - a) The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement, or
 - b) The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
- 6) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.

CA remedies

- 1) If the CA determines that a breach has occurred, the CA may exercise any of its rights or remedies under the HAP contract.
- 2) The CA must notify the owner in writing of such determination. The notice by the CA to the owner may require the owner to take corrective action (as verified by the CA) by a time prescribed in the notice.

- 3) The CA's rights and remedies under the HAP contract include recovery of overpayments, termination or reduction of housing assistance payments, and termination of the HAP contract.

CA remedy is not waived

The CA's exercise or non-exercise of any remedy for owner breach of the HAP contract is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

OWNER DUTY TO PROVIDE INFORMATION AND ACCESS REQUIRED BY HUD OR CA

Required information

The owner must prepare and furnish any information pertinent to the HAP contract as may reasonably be required from time to time by the CA or HUD. The owner shall furnish such information in the form and manner required by the CA or HUD.

CA and HUD access to premises

The owner must permit the CA or HUD or any of their authorized representatives to have access to the premises during normal business hours, and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the HAP contract, including the verification of information pertinent to the housing assistance payments or the HAP contract.

CA AND OWNER RELATION TO THIRD PARTIES

Injury because of owner action or failure to act

The CA has no responsibility for or liability to any person injured as a result of the owner's action or failure to act in connection with the implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

Legal relationship

The owner is not the agent of the CA. The HAP contract does not create or affect any relationship between the CA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with the implementation of the HAP contract.

Exclusion of third party claims

Nothing in the HAP contract shall be construed as creating any right of a family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the CA or the owner under the HAP contract.

Exclusion of owner claims against HUD

Nothing in the HAP contract shall be construed as creating any right of the owner to assert any claim against HUD.

CONFLICT OF INTEREST

Prohibited interest

- 1) No covered individual or entity may have any direct or indirect interest in the HAP contract.
- 2) Direct or indirect interest includes the interest of an immediate family member.

Definitions

- 1) "Immediate family member" means the spouse, parent, child, grandparent, grandchild, sister, or brother of any covered individual.
- 2) "Covered individual or entity" means an individual or entity that is a member of any of the following classes:
 - a) A member, officer or director of the CA, or any other CA official with administrative functions or responsibility concerning contract administration under the ACC.
 - b) If the CA is an instrumentality of a governmental body:
 - i) A member, officer or director of such governmental body.
 - ii) A member, officer or director of any entity that holds a direct or indirect interest in the instrumentality entity.
 - c) An employee of the CA.
 - d) A CA contractor, subcontractor or agent with administrative functions or responsibility concerning contract administration under the ACC, or a principal or other interested party of such contractor, subcontractor or agent.
 - e) An individual who has administrative functions or responsibility concerning contract administration under the ACC, including an employee of a CA contractor, subcontractor or agent.
 - f) A public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities concerning contract administration under the ACC.

Disclosure

- 1) A covered individual or entity must disclose his, her or its interest or prospective interest in the HAP contract, or any other contract, subcontract or other arrangement in connection with contract administration under the ACC to the CA and HUD.
- 2) The owner certifies that it has fully disclosed to the CA and HUD any interest that would be a violation of the conflict of interest requirements, and that it will fully and promptly update such disclosures.

HUD waiver

- 1) HUD may waive the conflict of interest requirements for good cause.
- 2) Any covered individual or entity for whom a waiver is granted may not execute any contract administration functions or responsibility concerning a HAP contract under which such individual is or may be assisted, or with respect to a HAP contract in which such individual or entity is a party or has any interest.

Interest of member of Congress

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.

EXCLUSION FROM FEDERAL PROGRAMS

Federal requirements

The owner must comply with and is subject to requirements of 24 CFR Part 24, concerning debarment, suspension, and limited denial of participation.

Disclosure

The owner certifies that:

- 1) The owner has disclosed to the CA the identity of the owner and any principal or interested party.
- 2) Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended or subject to a limited denial of participation under 24 CFR part 24.

TRANSFER OF THE CONTRACT OR PROPERTY

When consent is required

- 1) The owner agrees that the HAP contract may not be transferred without the advance written consent of the CA in accordance with HUD requirements.
- 2) The owner agrees that the property may not be transferred without the advance written consent of the CA in accordance with HUD requirements.
- 3) "Transfer" includes:
 - a) An assignment or other transfer of ownership, in any form, of the HAP contract or the property;
 - b) An assignment or other transfer of the right to receive housing assistance payments that may be payable pursuant to the HAP contract;
 - c) The creation of a security interest in the HAP contract or the property;
 - d) Foreclosure or other execution on a security interest; or
 - e) A creditor's lien, or a transfer in bankruptcy.
- 4) If the owner is a corporation, partnership, trust or joint venture, the owner is not required to obtain advance consent of the CA pursuant to this paragraph a of the HAP contract for transfer of a passive and non-controlling interest in the ownership entity (such as a stock transfer or transfer of the interest of a limited partner), if any interests so transferred cumulatively represent less than half the beneficial interest in the HAP contract or the property. The owner must obtain advance consent pursuant to paragraph a of the HAP contract to transfer any interest of a general partner.

Transferee assumption of HAP contract

No transferee (including the holder of a security interest, the security holder's transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive any payment of housing assistance payments pursuant to the HAP contract, or to exercise any rights or remedies under the HAP contract, unless the CA has consented in advance, in writing, to such transfer, and the transferee has agreed in writing, in a form acceptable to the CA in accordance with HUD requirements, to assume the obligations of the owner under the HAP contract, and to comply with all the terms of the HAP contract.

Effect of consent to transfer

- 1) The creation or transfer of any security interest in the HAP contract is limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.
- 2) The CA's consent to transfer of the HAP contract does not change the terms of the HAP contract in any way, and does not change the rights or obligations of the CA or the owner under the HAP contract.
- 3) The CA's consent to transfer of the HAP contract to any transferee does not constitute consent to any further transfers of the HAP contract, including further transfers to any successors or assigns of an approved transferee.

When transfer is prohibited

The CA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended or subject to a limited denial of participation under 24 CFR part 24, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

OWNER DISCLOSURE OF OTHER GOVERNMENT ASSISTANCE

Owner disclosure

The owner must disclose to the CA, in accordance with HUD requirements, information regarding any assistance from the Federal Government, a State, or a unit of general local government, or from any agency or instrumentality thereof, that is available or expected to be available with respect to the contract units ("covered assistance"). Covered assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, or tax benefit, or any other form of direct or indirect assistance.

Limit of payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of any covered assistance. The CA will adjust, in accordance with HUD requirements, the amount of the housing assistance payments to the owner to compensate in whole or in part for any covered assistance.

OWNER LOBBYING CERTIFICATIONS

- a. The owner certifies, to the best of owner's knowledge and belief, that:
 - 1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the HAP contract.
 - 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

NOTICES AND OWNER CERTIFICATIONS

- a. Where the owner is required to give any notice to the CA pursuant to the HAP contract, such notice must be in writing, and must be given in the form and manner required by the CA.

- b. Any certification or warranty by the owner pursuant to the HAP contract shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

HUD REQUIREMENTS

The HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP contract. The owner agrees to comply with all such laws and HUD requirements.

ENTIRE AGREEMENT

The HAP contract, including the exhibits, is the entire agreement between the CA and the owner. No changes in the HAP contract may be made except in writing signed by both the owner and the CA

EXHIBIT A

IDENTIFICATION OF UNITS ("CONTRACT UNITS") BY SIZE AND APPLICABLE CONTRACT RENTS

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent
15	Studio	\$ 437.00	\$ 78.00	\$ 515.00
35	1 Bedroom	\$ 498.00	\$ 89.00	\$ 587.00

NOTE: This Exhibit will be amended by Contract Administrator notice to the Owner to specify adjusted contract rent amounts as determined by the Contract Administrator in accordance with section 6a of the Renewal Contract.

EXHIBIT B

PROVIDE LISTING OF ALL SERVICES, MAINTENANCE AND UTILITIES TO BE PROVIDED BY OWNER

Services	Maintenance	Utilities
Elevator	Refuse Removal	Cold Water
Parking		Storm Sewer
Community Room		Sanitary Sewer
Range (elec.)		
Laundry Facility		
Refrigerator		
